No. 2437

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT

D. W. STANDROD & COMPANY, a Corproation, as Trustee for the IDAHO LUMBER COMPANY, Ldt., a Corporation, and for GEO.A.LOWE COMPANY, a Corporation,

Appellant,

vs.

UTAH IMPLEMENT-VEHICLE COMPANY, a Corporation,

Appellee.

TRANSCRIPT OF THE RECORD

Upon Appeal from the United States District Court for the District of Idaho, Eastern Division.

SYMS-YORK CO., PRINTERS & BINDERS, BOISE

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INDEX

[**Names and Addresses of Attorneys**]

ST. CLAIR & ST. CLAIR, Idaho Falls, Idaho,
Attorneys for Plaintiff.

WILLIAM A. LEE, Blackfoot, Idaho,
Attorney for Appellant, D. W. Standrod & Company, as Trustee.

O. E. McCUTCHEON, Idaho Falls, Idaho,
Attorney for Frank C. Bowman, as Trustee.

JOHN W. JONES, Blackfoot, Idaho,
Attorney for E. E. Rodgers and F. C. Rodgers.

In the District Court of the United States, for the District of Idaho, Eastern Division.

IN EQUITY.

UTAH IMPLEMENT-VEHICLE COMPANY, a Corporation,

Plaintiff,

vs.

FRANK C. BOWMAN, as Trustee in Bankruptcy of the Estate of N. C. Mickelson, a Bankrupt, and D. W. STANDROD & COMPANY, a Corporation, as Trustee for Idaho Lumber Company, Ltd., GEO. A. LOWE COMPANY, E. E. RODGERS and F. C. RODGERS,

Defendants.

BILL OF COMPLAINT.

To the Judges of the District Court of the United States, for the District of Idaho, Eastern Division.

Utah Implement-Vehicle Company, a Corporation duly organized and existing under and by virtue of

the laws of the State of Utah, having its principal place of business at Salt Lake City, in said State of Utah and Salt Lake City in the State of Utah being its legal residence and place of business brings this bill of complaint against Frank C. Bowman as Trustee in Bankruptcy of the estate of N. C. Mickelson, a bankrupt, a resident and citizen of the State of Idaho residing at Idaho Falls in Bonneville county, Idaho, and against D. W. Standrod & Company, an Idaho corporation having its principal place of business at Blackfoot in Bingham county and said Blackfoot, Idaho, being its legal residence and place of business, as Trustee for Idaho Lumber Company, Ltd., Geo. A. Lowe Company, E. E. Rodgers and F. C. Rodgers, and as grounds for the jurisdiction of this Court the plaintiff alleges and represents that this controversy is between a resident and citizen of the State of Utah as plaintiff and against residents and citizens of the State of Idaho as defendants and that the amount in controversy in this action exceeds the sum of Three Thousand ($3,000.00) Dollars, exclusive of interest and costs and thereupon complaining the plaintiff complains of the defendants and for cause of action against the said defendants the plaintiff alleges as follows:

FIRST.

That the plaintiff is now and was during all of the times hereinafter mentioned a corporation duly organized and existing under and by virtue of the laws of the State of Utah and having its principal place

of business and its place of residence at Salt Lake City in the State of Utah.

SECOND.

That the defendant, Frank C. Bowman, is and has been since April 19th, 1911, the duly appointed, qualified and acting Trustee of the estate of N. C. Mickelson, a bankrupt, by virtue of his appointment as such trustee in bankruptcy proceedings pending in the District Court of the United States for the District of Idaho, Eastern Division, and that said Frank C. Bowman is a resident and citizen of the State of Idaho residing at Idaho Falls, in Bonneville county, Idaho.

THIRD.

That on April 23rd, 1913, the said District Court of the United States for the District of Idaho, Eastern Division, by its order duly made and entered, permitted this plaintiff to bring this action for the reformation and foreclosure of the mortgage in favor of the plaintiff hereinafter described against the said Trustee and such other parties as might be necessary or proper.

FOURTH.

That the defendant, D. W. Standrod & Company is a corporation duly organized and existing under and by virtue of the laws of the State of Idaho and is a citizen of the State of Idaho having its principal place of business and its legal residence at Blackfoot in Bingham county, Idaho.

FIFTH.

That in the said District Court of the United States for the District of Idaho, Eastern Division, the said N. C. Mickelson was on March 18th, 1911, by said Court duly declared and adjudged a bankrupt.

SIXTH.

That on or about the 6th day of February, 1911, the said N. C. Mickelson and Ruby Mickelson, his wife, executed and delivered to the plaintiff their certain promissory note in writing, dated February 6th, 1911, whereby they, or either of them promised to pay to the order of the plaintiff the sum of Twelve Thousand Five Hundred Seventy-five and 75-100 ($12,575.75) Dollars on February 6th, 1912, together with interest thereon at the rate of eight per cent. per annum from the date of said note until due and interest thereon after the maturity of said note at the rate of twelve per cent. per annum.

SEVENTH.

That at the time of the execution and delivery of said note, in order to secure the payment thereof, the said defendants, N. C. Mickelson and Ruby Mickelson, also executed and delivered to the plaintiff their certain written mortgage, dated February 6th, 1911, mortgaging to the plaintiff the following described real estate, to-wit:

Beginning at the Northwest corner of Lots One and Two (1 and 2) of Block Eighteen (18) of the

Townsite of Shelley, Bingham county, Idaho; thence East seventy-five (75) feet; thence South one hundred and thirty-two (132) feet; thence West to East boundary line of the O. S. L. Ry. right of way; thence Northeast along said right of way to place of beginning. Also the South Half and the Northeast Quarter of the Southwest Quarter (NE¼ SW¼) of Section Thirty-four (34) in Township One (1) North Range Thirty-seven (37) East of Boise Meridian, together with all the improvements, privileges and appurtenances thereunto belonging.

The said mortgage was duly executed, acknowledged and certified and the same was on the 21st day of February, 1911, duly filed in the office of the Recorder of Bingham county, Idaho, and recorded in Book "30" of Mortgage Records of said county at page 79. The said mortgage is conditioned for the payment of said note and the interest thereon in accordance with the terms of said note and it provides for the payment of a reasonable attorney's fee in the event of the foreclosure thereof out of the proceeds of sale of said property and it provides that in the event of the failure to pay said note, or any interest when due that the holder of said mortgage may foreclose the same.

EIGHTH.

That at the time of the execution and delivery of said mortgage the said N. C. Mickelson did not, nor did his wife, the said Ruby Mickelson, own or have any right, title or interest in or to the Northeast

Quarter of the Southwest Quarter (NE¼ SW¼) of said Section Thirty-four (34), Township One (1) North Range Thirty-seven (37) East of Boise Meridian in Bingham county, Idaho, but the said N. C. Mickelson was then the legal owner and holder of the remainder of the real estate described in said mortgage and the said N. C. Mickelson was at that time the legal owner and in the possession of the Northwest Quarter of the Southwest Quarter (NW¼ SW¼) of said Section Thirty-four (34) in the Township and Range aforesaid and the plaintiff alleges that it was the intention of the said N. C. Mickelson and his wife to describe in said mortgage and cover thereby and the intention of this plaintiff to take and receive a mortgage describing the real estate in said Section Thirty-four (34), Township and Range aforesaid, of which said N. C. Mickelson was then the legal owner, but by mutual mistake of the parties to said mortgage a mistake was made in describing the Northeast Quarter of the Southwest Quarter (NE¼ SW¼) of said Section Thirty-four (34) instead of the Northwest Quarter of the Northwest Quarter of said Section Thirty-four (34), which was intended and the plaintiff alleges that it was the intention of the parties to said mortgage therein to describe and thereby mortgage, as the security for the payment of the aforesaid mortgage to the plaintiff the following described real estate, to-wit:

Beginning at the Northwest corner of Lots One and Two (1 and 2) of Block Eighteen (18) of the

Townsite of Shelley, Bingham county, Idaho; thence East seventy-five (75) feet; thence South one hundred thirty-two (132) feet; thence West to the East boundary line of the O. S. L. Ry. right of way; thence Northeast along said railroad right of way to the place of beginning. Also the South Half of the Southwest Quarter (S½ SW¼) and the Northwest Quarter of the Southwest Quarter (NW¼ SW¼) of Section Thirty-four (34) in Township One (1) North of Range Thirty-seven (37) East of B. M., together with the improvements, privileges and appurtenances thereunto belonging.

NINTH.

That said note has not been paid, nor has any part thereof been paid, nor has the interest upon said note or any part thereof been paid.

TENTH.

That Twelve Hundred ($1200.00) Dollars is a reasonable attorney's fee for the foreclosure of said mortgage and that the plaintiff has obligated itself to pay its attorneys in this action a reasonable attorney's fee for the foreclosure of said mortgage.

ELEVENTH.

That the Idaho Lumber Company, Ltd., on February 7th, 1911, filed its claim of a mechanic's lien against the said real estate, hereinbefore described, situate in the village of Shelley, Bingham county, Idaho, in the office of the Recorder of Bingham county, Idaho, which was recorded in Book "3" of

Lien Records of said county at page 172, claiming a lien thereon for Two Thousand Three Hundred Ninety-nine and 98-100 ($2,399.98) Dollars and afterwards on September 5th, 1911, the said Idaho Lumber Company, Ltd., filed its complaint in the District Court of the Sixth Judicial District of the State of Idaho in and for Bingham county, against F. C. Bowman, Trustee in Bankruptcy of the estate of N. C. Mickelson, bankrupt, for the foreclosure of said lien.

That on March 7th, 1911, one P. J. Johnson filed in the office of the Recorder of Bingham county, Idaho, his claim of mechanic's lien against said premises situate in the village of Shelley, Idaho, and which lien was recorded in Book "3" of Lien Records of said county at page 174, said lien being for One Hundred Thirty-four and 25-100 ($134.25) Dollars and afterwards on April 10th, 1911, said P. J. Johnson filed his claim of lien against said premises situate in the village of Shelley, Idaho, claiming Thirty-seven and 50-100 ($37.50) Dollars, which lien was filed in the office of the Recorder of Bingham county, Idaho, and recorded in Book "3" of Lien Records of said county at page 177 and thereafter on November 20th, 1911, the said P. J. Johnson filed his complaint for the foreclosure of said liens in the District Court of the Sixth Judicial District of the State of Idaho, in and for Bingham county, against the said N. C. Mickelson as defendant.

That on January 2nd, 1911, a certain mortgage from N. C. Mickelson to E. E. Rodgers and F. C.

Rodgers, securing the payment of Three Thousand ($3,000.00) Dollars and interest, dated November 29th, 1910, covering the said premises hereinbefore described situate in the village of Shelley, Idaho, was filed in the office of the Recorder of said Bingham county, Idaho, on January 2nd, 1911, and recorded in Book "30" of Mortgage Records of said county at page 58 and afterwards on the 11th day of January, 1912, the said E. E. Rodgers and F. C. Rodgers filed their complaint for the foreclosure of said mortgage in the District Court of the Sixth Judicial District of the State of Idaho in and for Bingham county against N. C. Mickelson and Frank C. Bowman, Trustee in Bankruptcy of the estate of N. C. Mickelson, bankrupt, as defendants.

That Geo. A. Lowe Company on March 10th, 1911, filed its claim of mechanic's lien against the said premises in Shelley, Idaho, for the sum of Eight Hundred Forty-seven and 61-100 ($847.61) Dollars in the office of the Recorder of Bingham county, Idaho, and said lien was recorded in Book "3" of Lien Records of said county at page 175 and afterwards on September 5th, 1911, said Geo. A. Lowe Company filed its complaint for the foreclosure of said lien in the District Court of the Sixth Judicial District of the State of Idaho in and for Bingham county, against F. C. Bowman, Trustee in Bankruptcy of the estate of N. C. Mickelson, bankrupt, as defendant.

That Crane Company filed its claim of lien against the said premises situate in Shelley, Idaho, on March

11th, 1911, in the office of the Recorder of said Bingham county, which said lien was recorded in Book "3" of Lien Records of said county at page 176, the said claim of lien being for One Thousand Four Hundred Thirteen and 24-100 ($1,413.24) Dollars and afterwards on April 8th, 1911, said Crane Compand filed its complaint for the foreclosure of said lien in the District Court of the Sixth Judicial District of the State of Idaho, in and for Bingham county, against N. C. Mickelson as defendant.

That on May 1st, 1911, one D. F. Hagans filed his claim of mechanic's lien against the said premises situate in Shelley, Idaho, claiming the sum of Three Hundred Thirty-seven and 97-100 ($337.97) Dollars and said lien was recorded in Book "3" of Lien Records of said county at page 179 and thereafter on November 1st, 1911, said D. F. Hagans filed his complaint in the District Court of the Sixth Judicial District of the State of Idaho, in and for Bingham county for the foreclosure of said lien against F. C. Bowman, Trustee in Bankruptcy of the estate of N. C. Mickelson, bankrupt, as defendant.

That afterwards all of the said actions, hereinbefore in this paragraph mentioned, were by order of the said District Court of the Sixth Judicial District of the State of Idaho, in and for Bingham county, consolidated and thereafter a judgment was entered in said consolidated action foreclosing said Rogers mortgage and all of the said liens in this paragraph described and ordering the said premises situate in the village of Shelley, Idaho, sold to satisfy

the same, said judgment being dated and filed in said Court on May 31st, 1912, and afterwards the said District Court, by its order and judgment entered in said consolidated action, dated November 25th, 1912, and filed in said Court on November 25th, 1912, corrected its conclusions of law and judgment, as theretofore entered in said consolidated action, in which said last mentioned order and judgment the priorities and the order of said Court as to distribution of the proceeds of sale of said property was changed. That afterwards an execution was issued upon said judgment rendered and entered in said consolidated actions to the Sheriff of Bingham county and said Sheriff of Bingham county, Idaho, under and in pursuance of said execution, sold the said premises hereinbefore described situate in the village of Shelley, Idaho, to the defendant D. W. Standrod & Company, as Trustee for said Idaho Lumber Company, Ltd., and for said Geo. A. Lowe Company and for said E. E. Rodgers and for said F. C. Rodgers for the sum of Six Thousand Seven Hundred Twenty-eight and 41-100 ($6,728.41) Dollars and the said Sheriff issued his certificate of sale of said premises to the said D. W. Standrod & Co. and filed the duplicate thereof with the Recorder of said Bingham county and the said Sheriff, after paying his fees, commissions and expenses on said sale, amounting to One Hundred Twenty-one and 65-100 ($121.65) Dollars distributed the balance of the proceeds of said sale, amounting to Six Thousand Six Hundred and Six and 76-100 ($6,606.76) Dollars,

to the parties to said consolidated action as follows:

To Idaho Lumber Company, Ltd., Eight Hundred Seventy-six and 38-100 ($876.38) Dollars;

To E. E. Rodgers and F. C. Rodgers Four Thousand One Hundred and Nine and 39-100 ($4,109.39) Dollars;

Geo. A. Lowe Company One Thousand One Hundred Twelve and 55-100 ($1112.55) Dollars;

P. J. Johnson Two Hundred Seventy-four and 77-100 ($274.77) Dollars;

D. F. Hagans Two Hundred Thirty-three and 67-100 ($233.67) Dollars.

That all of the said liens were filed and recorded more than two years prior to the date of the filing of this bill of complaint and that the plaintiff herein was not a party to any of said actions for the foreclosure of said liens and mortgage in this paragraph described and no attempt has been made to enforce said mechanic's liens, claimed as aforesaid, or any of them, as against this plaintiff, nor has any attempt been made to enforce said mortgage in favor of E. E. Rodgers and F. C. Rodgers as against this plaintiff and the plaintiff alleges that the time for the commencement of an action or actions against this plaintiff for the foreclosure of said alleged mechanic's liens and all of them has expired under the provisions of Section 5118 of the Idaho Revised Codes and all of the said liens are barred, as against this plaintiff, by the provisions of Section 5118 of the Idaho Revised Codes and the plaintiff alleges that as

to this plaintiff the said alleged liens stand as if none of them had ever been foreclosed and the said alleged mortgage in favor of E. E. Rodgers and F. C. Rodgers stands the same as if it had never been foreclosed and the plaintiff alleges that the rights, liens, and interest of the defendants, D. W. Standrod & Company, as Trustee as aforesaid, or otherwise, in or to or against the said premises situate in the village of Shelley, Idaho, are junior, inferior and subject to the lien of the mortgage in favor of this plaintiff hereinbefore described, except as to any rights; or lien which the said D. W. Standrod & Company as Trustee, as aforesaid, may have acquired or be entitled to by subrogation to the mortgage lien in favor of E. E. Rodgers and F. C. Rodgers, but as to said mortgage in favor of E. E. Rodgers and F. C. Rodgers this defendant has not sufficient information to enable it to state whether there is anything due under or upon said mortgage, or not and for that reason and in order to put the defendant, D. W. Standrod & Company, upon its proof as to any right or lien it may have under said Rodgers mortgage the plaintiff alleges that there is no amount whatever due or unpaid under or upon said Rodgers mortgage and that the defendant, D. W. Standrod & Company, as Trustee, as aforesaid, or otherwise, has no right, title or interest in or to or any lien upon the said premises situate in the village of Shelley, Idaho, hereinbefore described, as against this plaintiff.

TWELFTH.

That the said mortgaged real estate intended to be covered by said mortgage and being the premises situate in said Section Thirty-four (34), are incumbered by a first mortgage thereon filed in the office of the Recorder of Bingham county, Idaho, on November 5th, 1910, securing the payment of the sum of One Thousand ($1,000.00) Dollars and interest in favor of Bowen Curley and which has been assigned by the said Bowen Curley to one James O. Crosby and also by a certain second mortgage for the sum of One Hundred ($100.00) Dollars in favor of the said Bowen Curley, recorded November 26th, 1910.

THIRTEENTH.

That the said mortgaged premises are wholly insufficient to pay the indebtedness secured by the plaintiff's said mortgage and the value of said premises intended to be covered by said mortgage and last hereinbefore fully described are not of the value of the amount due to the plaintiff under its said mortgage.

WHEREFORE, plaintiff prays that its said mortgage, hereinbefore described, may be reformed so as to describe and cover the following described real estate, to-wit:

Beginning at the Northwest corner of Lots One and Two (1 and 2) of Block Eighteen (18) of the Townsite of Shelley, Bingham county, Idaho, thence East Seventy-five (75) feet; thence South One hundred Thirty-two (132) feet; thence West to the East

boundary line of the O. S. L. Ry. right of way; thence Northeast along said railroad right of way to the place of beginning. Also the South Half of the Southwest Quarter (S½ SW¼) and the Northwest Quarter of the Southwest Quarter (NW¼ SW¼) of Section Thirty-four (34) in Township One (1) North of Range Thirty-seven (37) East of Boise Meridian, together with the improvements, privileges and appurtenances thereunto belonging.

That plaintiff may have an accounting of the amounts due to it under its said mortgage, including interest, costs of this suit and attorney's fees; that a decree may be entered finding that the plaintiff has a valid and subsisting lien upon the real estate described in said mortgage as reformed and as described in this prayer for the sum of Twelve Thousand Five Hundred Seventy-five and 75-100 ($12,575.75) Dollars, together with interest thereon at the rate of eight per cent. per annum from February 6th, 1911, to February 6th, 1912, and at the rate of twelve per cent. per annum after February 6th, 1912, and also together with Twelve Hundred ($1200.00) Dollars attorney's fees and the costs of this action and finding that the rights, liens or interests of the defendants in or to or upon said premises are junior, inferior and subject to the lien awarded to the plaintiff under its said mortgage upon the real estate in this prayer described and that the defendants and all persons claiming under them, or any of them, be debarred and foreclosed of any right, claim or equity of redemption of, in or to said

last described premises and every part thereof and ordering a sale of said premises, subject to the first and second mortgages upon the land in said Section Thirty-four (34) for One Thousand ($1,000.00) Dollars and interest and for One Hundred ($100.00) Dollars and interest respectively, to satisfy the amounts found due to the plaintiff under its said mortgage, including interest, costs and attorney's fees and the costs and expenses of sale; that upon report of such sale and confirmation thereof a deed or deeds be executed to the purchaser or purchasers of the premises purchased and that the plaintiff may have such other and further relief as may be just and equitable and this plaintiff further prays that during the pendency of this action, after notice to the defendants of the time and place of hearing, that a Receiver of the said premises last hereinbefore described, be appointed by this Court to take charge of said premises and rent and collect the rents thereof and hold the same subject to the final decree of this Court and that by said final decree of this Court the net proceeds of the said property coming into the hands of the said Receiver after the payment of the cost of receivership be applied to any amount remaining due to the plaintiff after the application of the proceeds of sale of said premises, as provided by the decree of this Court.

CLENCY ST. CLAIR and
CHARLES C. ST. CLAIR,
Attorneys for Plaintiff.

Residence and Postoffice Address: Idaho Falls, Idaho.

State of Idaho,
County of Bonneville,—ss.

Clency St. Clair being first duly sworn upon his oath says: That he is one of the attorneys for the plaintiff in the above entitled action; that the plaintiff is a corporation as is stated in the foregoing bill of complaint and that none of its officers reside in the State of Idaho wherein this affiant resides and for that reason this verification is made by this affiant; that he has read the foregoing bill of complaint and knows the contents thereof and that he believes the facts therein stated to be true.

CLENCY ST. CLAIR.

Subscribed in my presence and sworn to before me this 27th day of May, 1913.

(Seal) J. M. ADAMS,
Notary Public.

(Endorsed): Filed May 29, 1913. A. L. Richardson, Clerk. By E. B. Yarington, Deputy.

In the District Court of the United States, for the District of Idaho, Eastern Division.

UTAH IMPLEMENT-VEHICLE COMPANY, a Corporation,

Plaintiff,

vs.

FRANK C. BOWMAN, as Trustee in Bankruptcy, of the Estate of N. C. Mickelson, a Bankrupt, and D. W. STANDROD & COMPANY, a Corporation, as Trustee for Idaho Lumber Company, Ltd., Geo. A. Lowe Company, E. E. Rodgers and F. C. Rodgers,

Defendants.

Answer of D. W. Standrod & Company, Trustee.

Comes now D. W. Standrod & Company, a corporation, as Trustee for Idaho Lumber Company, Ltd., Geo. A. Lowe Company, E. E. Rodgers and F. C. Rodgers, and for answer to plaintiff's bill admits, denies and alleges as follows:

I.

Answering the first paragraph of plaintiff's bill it says that as to whether plaintiff is now, or was at all times therein mentioned, a corporation duly organized and existing under and by virtue of the laws of the State of Utah, or as to whether or not as such corporation it has its principal place of business, or its place of residence at Salt Lake City, in the State of Utah, defendant is without knowledge, and upon that ground denies said averment.

II.

Answering the second paragraph of said bill it admits and alleges that Frank C. Bowman is now, and has been at all times since April 19th, 1911, the duly appointed, qualified and acting Trustee of the estate of N. C. Mickelson, a bankrupt, in the proceedings pending in the District Court of the United States for the District of Idaho, Eastern Division, and that the said Frank Bowman is a citizen of the State of Idaho, residing at Idaho Falls, in Bonneville county.

III.

Answering the fourth paragraph of said bill defendant admits and alleges that D. W. Standrod & Company is a corporation organized and existing under and by virtue of the laws of the State of Idaho, and is a citizen of the State of Idaho, and has its principal place of business and legal residence at Blackfoot, in Bingham county, Idaho.

IV.

Answering the fifth paragraph of said bill defendant admits and alleges that in the District Court of the United States, for the District of Idaho, Eastern Division, N. C. Mickelson was, on March 18th, 1911, by said court declared and adjudged a bankrupt.

V.

Answering the sixth paragraph of said bill defendant admits that on or about the 6th day of February, 1911, the said N. C. Mickelson and Ruby

Mickelson, his wife, executed and delivered to plaintiff their certain promissory note, in writing, dated February 6th, 1911, whereby they, or either of them, promised to pay to the order of plaintiff the sum of $12,575.75, on February 6th, 1912, with interest thereon at the rate of eight per cent. per annum from the date of said note until due, and thereafter interest at the rate of twelve per cent. per annum; but this defendant alleges that the said N. C. Mickelson and Ruby Mickelson executed said promissory note to the said plaintiff in payment of, or to secure, a pre-existing debt on the part of the makers of said note to said plaintiff; that at the time of the execution of said instrument said makers were wholly insolvent, which insolvency was well known by plaintiff and the makers of said note long before and at the time of the taking of said note and the security therefor, and that at said time there was no present consideration for the giving of said note, and no other consideration whatever, save and except to secure said pre-existing indebtedness, and that the giving of said note and the security therefor constituted and was an act of bankruptcy, and was given by the makers of said note, and accepted by this plaintiff, for the purpose and with the intention of securing preference on the part of this plaintiff over the creditors of the said N. C. Mickelson, he then and there being insolvent, as said plaintiff well knew.

VI.

Answering the ninth paragraph of said bill this defendant says that it is without knowledge as to

whether or not said note, or any part thereof, has been paid, and upon that ground denies that said note and the interest thereon has not been fully paid and discharged, and denies that any sum whatever is due thereon to plaintiff.

VII.

Answering the tenth paragraph of said bill this defendant says that said note and the mortgage given to secure the same, having been by the said N. C. Mickelson given when he was a bankrupt, and plaintiff having taken said note and security therefor, well knowing the said N. C. Mickelson to be a bankrupt, and said note and mortgage having been given without any present consideration and for the purpose of securing a pre-existing indebtedness for goods, wares and merchandise purchased by the said N. C. Mickelson from the plaintiff in the ordinary course of business, and the execution of said note and mortgage constituting and being an attempt on the part of said N. C. Mickelson to prefer said plaintiff, and having been taken by the said plaintiff with the full knowledge of such insolvency, and for the purpose on the part of plaintiff to secure a preference as against this defendant and the persons and claims mentioned in said bill for which it is acting as Trustee, it denies that $1200.00 or any other sum is a reasonable attorney's fee for the foreclosure of said mortgage, and denies that plaintiff is entitled to recover any attorney's fee whatever for the foreclosure of said mortgage; but answering alternatively said paragraphs defendant says that if this

court should find that plaintiff is entitled to recover upon said mortgage, that $1200.00, or any other or greater sum than $800.00 would be an unreasonable attorney's fee for the foreclosure of said mortgage, and denies that any other or greater sum than $800.00 is, or would be, a reasonable attorney's fee in event it be found that plaintiff is entitled to any attorney's fee.

VIII.

Answering the eleventh paragraph of plaintiff's bill this defendant admits all of the allegations therein contained, except as herein otherwise qualified, explained or denied.

And further answering said eleventh paragraph, and for an affirmative defense and by way of counterclaim and set-off to said eleventh paragraph, and to plaintiff's entire bill this defendant alleges:

(1). That all of the said persons and corporations mentioned, to-wit: P. J. Johnson, D. F. Hagans, Geo. A. Lowe Company, a corporation, and Idaho Lumber Company, Ltd., a corporation, and Crane Company, a corporation, each severally made and filed in the office of the Recorder of Bingham county, Idaho, their claims for mechanics' liens in the said several amounts mentioned in the eleventh paragraph of plaintiff's bill against the following described property, belonging to the estate of said N. C. Mickelson, a bankrupt, to-wit:

Beginning at the northwest corner of Lots One (1) and Two (2), in Block Eighteen (18), in the

town of Shelley, Bingham county, Idaho, running thence east seventy-five (75) feet, thence south one hundred thirty-two (132) feet, thence west to the east boundary line of the O. S. L. Railroad company's right of way, thence northeast along the easterly side of said railroad right of way to place of beginning.

That on the 29th day of November, 1910, for a present consideration of $3000.00, cash then in hand paid to him by the said E. E. Rodgers and F. C. Rodgers, the said N. C. Mickelson, then an unmarried man, executed and delivered to said E. E. Rodgers and F. C. Rodgers his certain promissory note for the sum of $3000.00, with interest and attorney's fees, according to the tenor and effect of said note, and to secure the same executed a mortgage or trust deed on said premises in this paragraph described, to the said E. E. Rodgers and F. C. Rodgers; that the consideration for the execution of said note and mortgage then paid was the said sum of $3000.00, which said sum was used in and upon and for the construction of the building then being erected upon said premises; that all of the persons and corporations herein named as having filed mechanic's liens against the property herein described, including the said E. E. Rodgers and F. C. Rodgers, who had taken said note and mortgage against said premises long prior to the commencement of any proceedings in court, each severally obtained from the District Court of the United States, for the District of Idaho, Eastern Division, an order permitting them to pros-

ecute an action for the foreclosure of their respective liens and mortgage in the District Court of the Sixth Judicial District of the State of Idaho, in and for the county of Bingham, against N. C. Mickelson and Frank C. Bowman, Trustee in Bankruptcy of the estate of N. C. Mickelson, bankrupt; that thereafter and within the time allowed by law, said several parties herein mentioned each severally commenced actions to foreclose their said respective liens and said mortgage, and thereafter by order of said court, in which the same were pending, said actions were consolidated, and proceeded to final judgment, and said court, by its findings of fact and conclusions of law then and there having jurisdiction of said parties and the subject of said several causes of action, made and entered its final judgment and decree in said action so consolidated on the 25th day of November, 1911, and then and thereby fixed an order of priority of said respective liens and said mortgage and the amount due on each of them severally, including attorney's fees, taxes and costs; that thereafter execution was awarded against said defendant, and the premises herein described were levied upon and sold by the Sheriff of Bingham county, Idaho, according to law on the 4th day of January, 1913, at Blackfoot, for the sum of $6728.41, and no more; that the amount of said respective liens and of said mortgage and the priority thereof, as fixed by said judgment, was in the first class to E. E. Rodgers and F. C. Rodgers, $212.63 for taxes and interest thereon paid on said premises from December 30th, 1911,

the time of its payment; in the second class to the said P. J. Johnson, $264.47, and to D. F. Hagans, $224.50; in the third class to the said Idaho Lumber Company, $842.01, and the said Geo. A. Lowe Co., $1068.94; in the fourth class to the said E. E. Rodgers and F. C. Rodgers upon said mortgage the sum of $3947.65; and in the fifth class to the said Crane Company, the sum of $1749.15, each of said several amounts to draw interest from the 31st day of May, 1912, at the legal rate; that at said execution sale the Idaho Lumber Company and Geo. A. Lowe Company, and E. E. Rodgers and F. C. Rodgers, in order to protect their claims of the third and fourth classes, paid the liens of the first and second classes, then amounting to $714.13, and accrued costs and interests, and purchased said property through and by this defendant, D. W. Standrod & Company, as their Trustee, and this defendant, as such Trustee of said trust, was by the Sheriff of Bingham county given a certificate of sale to said premises, and filed a duplicate thereof in the office of the Recorder of Bingham county.

(2). That the said P. J. Johnson in August, 1911, was employed by the said N. C. Mickelson to perform certain labor as a carpenter upon that certain building being erected upon the premises described in subdivision (1) hereof, and between August, 1910, and March 1st, 1911, said P. J. Johnson performed labor thereon to the amount of $181.75, which said sum the said N. C. Mickelson agreed to pay therefor, no part of which has been paid, until

and except as stated in subdivision (1) hereof, and which sum became, and was then, due to the said Johnson, over and above all set-offs and counter-claims.

(3). Within the time allowed by law, the said P. J. Johnson, for the purpose of perfecting a lien upon said premises for said labor so performed, filed for record in the office of the County Recorder of said Bingham county his claim thereof, duly verified in all respects in conformity with the law; that at the time of said contract and at the time of the performance of said work and labor, the said N. C. Mickelson was the owner, and reputed owner, of said building and premises, and caused said work and labor to be done and performed.

(4). That said P. J. Johnson paid for verifying and recording said lien the sum of $5.00.

(5). That $50.00 is a reasonable fee to be allowed the said P. J. Johnson for the foreclosure of said lien, which sum he agreed to pay, and did pay, his said attorney.

(6). That said D. F. Hagans about September 10th, 1910, entered into a contract with said N. C. Mickelson to perform labor as a contractor, foreman and architect, in and about the construction of said building erected on the premises described in subdivision (1) hereof, for the agreed price of $150.00; that the said Hagans performed all of the terms and conditions of said contract on his part to be performed; that said services were rendered between

the 10th day of September, 1910, and the 11th day of March, 1911, all of said work and labor being performed on said building, and the said N. C. Mickelson was indebted to the said Hagans for said labor in the sum of $150.00, after deducting all just credits and off-sets, and no part of the sum has ever been paid, until and except as stated in subdivision (1) hereof.

(7). At the time said work and labor were performed N. C. Mickelson was the owner, and reputed owner, of the premises so described, and the buildings erected thereon, and on May 1st, 1911, said Hagans, for the purpose of securing and perfecting a lien for the money so due him, upon said buildings and lands described, filed for record in the office of the County Recorder of said county of Bingham, his claim therefor, duly verified, which claim of lien was on the same day recorded in Book 3 of Liens, page 179, of the Records of Bingham county, Idaho.

(8). That the said Hagans paid for verifying said lien the sum of $4.00, and $50.00 is a reasonable attorney's fee for the foreclosure of said lien, which sum said Hagans paid to his attorney for said foreclosure.

(9). The said Idaho Lumber Company, Ltd., is now, and was at all times herein mentioned, a corporation organized and existing under and by virtue of the laws of the State of Idaho.

(10). On August 9th, 1910, the said Idaho Lumber Company, Ltd., entered into a contract with the

said N. C. Mickelson, whereby it agreed to furnish certain building materials for the erection and construction of a certain building erected upon the premises in subdivision (1) herein described, for the agreed price of $3848.00; that said Idaho Lumber Company performed all of the terms of said contract on its part to be performed, and the said N. C. Mickelson by reason thereof became indebted to the said Idaho Lumber Company in said sum, no part of which has been paid, except the sum of $3212.53, leaving a balance of $653.53, after deducting all just credits and off-sets, the last payment on account having been made April 19th, 1911; that said building materials were furnished as aforesaid between the 9th day of August, 1910, and the 9th day of March, 1911, and all of said material so furnished was used in said building.

(11). That on the 7th day of February, 1911, the said Idaho Lumber Company, Ltd., for the purpose of securing and perfecting a lien for the money so due as aforesaid, under said contract upon the building and lands described in subdivision (1), filed for record in the office of the Recorder of Bingham county, its claim therefor, duly verified, which said claim of lien was recorded in said office on said day, in Book 3 of Liens, at page 172 of the Records of said Bingham county; that said Idaho Lumber Company paid for verifying and recording said lien the sum of $2.00; that $150.00 was a reasonable attorney's fee to be allowed for the foreclosure of said

lien, which amount said Idaho Lumber Company agreed to pay its attorney therefor.

(12). That the said Geo. A. Lowe Company is now, and was at all times hereinafter mentioned, a corporation organized and existing under the laws of the State of Utah.

(13). That on or about June 5th, 1910, the said Geo. A. Lowe Company entered into a contract with N. C. Mickelson, by the terms of which it agreed to furnish certain building material which was used in the erection and construction of a building then being erected upon the premises of the said N. C. Mickelson, described in subdivision (1) hereof, for the agreed price of $878.48, which sum the said N. C. Mickelson agreed to pay the said Geo. A. Lowe Company therefor; that the said Geo. A. Lowe Company performed said contract on its part, and furnished said building material, all of which was used in said building, between the 5th day of June, 1910, and the 6th day of February, 1911, and by reason thereof said N. C. Mickelson became, and was, indebted to said Geo. A. Lowe Company, in the sum of $878.48, no part of which has ever been paid, except the sum of $30.78, leaving a balance of $847.60 due the said Geo. A. Lowe Company, after deducting all just credits and off-sets.

(14). That during said times mentioned said N. C. Mickelson was the owner, and reputed owner, of said lands and premises so described.

(15). That on the 10th day of March, 1911, the

said Geo. A. Lowe Company, for the purpose of securing and perfecting a lien for said money so due it for said building material under said contract, filed for record in the office of the Recorder of said Bingham county, its claim therefor, duly verified, which said claim of lien was recorded in said office in Book 3 of Liens, at page 175 of the Records of said Bingham county; that said Geo. A. Lowe Company paid for verifying and recording said lien the sum of $2.00.

(16). That $150.00 is and was a reasonable attorney's fee to be allowed for foreclosing said lien, and the said Geo. A. Lowe Company agreed to pay its attorney said sum therefor.

(17). That on the 29th day of November, 1910, for a present consideration of $3000.00 cash then in hand paid to him by the said E. E. Rodgers and F. C. Rodgers, the said N. C. Mickelson, then an unmarried man, executed and delivered to said E. E. Rodgers and F. C. Rodgers his certain promissory note for the sum of $3000.00, payable in lawful money of the United States, at Shelley, Bingham county, Idaho, three years after date, with interest at the rate of ten per cent. per annum from date, interest payable annually; said note provided for the payment of a reasonable attorney's fee in the event of the collection thereof by action.

(18). To secure the payment of said principal sum, the interest thereof and attorney's fees and costs, according to the tenor of said note, the said

N. C. Mickelson, then a single man, executed and delivered to E. E. Rodgers and F. C. Rodgers his certain mortgage deed of even date therewith, conditioned for the payment of said sum of $3000.00, and interest, costs and attorney's fees as specified in said note, and thereby conveyed and mortgaged to the said E. E. Rodgers and F. C. Rodgers the said premises described in subdivision (1) hereof, which said mortgage was duly acknowledged and on the 2nd day of January, 1911, recorded in the office of the County Recorder of Bingham county, in Book 30 of Mortgages at page 58 thereof.

(19). The said mortgage was conditioned for the payment of said note in accordance with its terms, and provided that in case of default in the payment of said note, or any part thereof, or if the interest be not paid, or if the mortgagor does not pay the taxes and assessments upon said premises as the same become due, that said mortgagees at their option could declare the whole sum expressed by said note immediately due and payable.

(20). Said N. C. Mickelson has not paid said note or any part thereof, nor any interest thereon, since December 30th, 1910; said N. C. Mickelson failed and neglected to pay the taxes on said premises for the year of 1911, amounting to the sum of $206.63, which the said E. E. Rodgers and F. C. Rodgers paid on December 30th, 1911; that by reason of N. C. Mickelson's failure to pay said interest and taxes as they became due, the principal sum expressed in said note became and was immediately

due, and said E. E. Rodgers and F. C. Rodgers elected to, and did, declare the whole amount secured by said mortgage due and payable.

(21). That $300.00 is a reasonable attorney's fee for the foreclosure of said mortgage, and said E. E. Rodgers and F. C. Rodgers agreed to pay their attorney said amount for such foreclosure.

(22). That said E. E. Rodgers and F. C. Rodgers are now, and were at all times herein mentioned, the owners and holders of said note and mortgage; that at the time of said sale heretofore mentioned in subdivision (1), on the 4th day of January, 1912, there was due and unpaid from the said N. C. Mickelson to the said E. E. Rodgers and F. C. Rodgers on said note and mortgage the sum of $4109.39, no part of which has ever been paid, save and except as in said subdivision explained, that is to say, by the said E. E. Rodgers and F. C. Rodgers joining said lien holders, and through this defendant and cross-complainant, as Trustee, purchasing said premises.

(23). That at the time of the sale of the property described in subdivision (1) of the 8th paragraph hereof, by the Sheriff of Bingham county, Idaho, to-wit, January 4th, 1913, there was due the said P. J. Johnson upon his judgment with accrued interest the sum of $274.77, and there was then due the said D. F. Hagans upon his judgment with accrued interest the sum of $233.67, and there was then due the Idaho Lumber Company, Ltd., a corporation, upon its judgment with the accrued interest the sum

of $876.38, and there was due the said Geo. A. Lowe Company, a corporation, upon its judgment with accrued interest the sum of $1112.55, and there was then due the said E. E. Rodgers and F. C. Rodgers upon their judgment with accrued interest thereon the sum of $4109.39; and upon said sale by the Sheriff as aforesaid the said Idaho Lumber Company, Ltd., a corporation, and the said Geo. A. Lowe Company, a corporation, and E. E. Rodgers and F. C. Rodgers apportionately paid the Sheriff's fee, commissions and expenses on said sale, amounting to the sum of $121.65, and also paid as hereinbefore alleged the labor claims of P. J. Johnson and D. F. Hagans, amounting to the sum of $508.44, and designated the said D. W. Standrod & Company, a corporation, their trustee for the purpose of having the said defendant herein mentioned, D. W. Standrod & Company, a corporation, purchase said premises for the amount of said Sheriff's fees, commissions and expenses on said sale, and the claims of the said P. J. Johnson and D. F. Hagans, and the claims of the said Idaho Lumber Company, Ltd., a corporation, and Geo. A. Lowe Company, a corporation, and E. E. Rodgers and F. C. Rodgers, and upon said sale the respective judgments of the said Idaho Lumber Company, Ltd., a corporation, and Geo. A. Lowe Company, a corporation, and E. E. Rodgers and F. C. Rodgers were satisfied to the extent of the amount of said respective judgments, and no funds as the proceeds of said sale or otherwise were distributed to the said Idaho Lumber Com-

pany, Ltd., a corporation, Geo. A. Lowe Company, a Corporation, and E. E. Rodgers and F. C. Rodgers, or any or either of them; and this answering defendant denies that the said Sheriff, after paying his fees, commissions and expenses on said sale, distributed the balance of the proceeds of said sale to the Idaho Lumber Company, Ltd., a corporation, Geo. A. Lowe Company, a corporation, and E. E. Rodgers and F. C. Rodgers, or either or any of them as alleged in paragraph eleven of plaintiff's Bill of Complaint, or otherwise or at all except as herein alleged.

(24). That at or about the time of the purchase of said premises by this defendant as such trustee, it paid the sum of $84.04 as taxes on said premises described in subdivision (1) to protect said property from sale.

(25). This defendant and cross-complainant further alleges that said note and mortgage, given by the said N. C. Mickelson and Ruby Mickelson on the 6th day of February, 1911, for said sum of $12,575.75, was by said makers executed to said plaintiff in payment of, or to secure, a pre-existing debt for goods, wares and merchandise purchased by the said N. C. Mickelson from said plaintiff in the course of carrying on a general mercantile business, which said indebtedness, as this defendant is informed and believes and upon that ground alleges, had existed in the form of an open account for some time previous thereto, and that the execution of said note and mortgage was for the purpose of giving to said plaintiff a preference over and above his other

creditors, and that the same was taken by said plaintiff with the full knowledge on its part that at the time of the execution of said note and mortgage the said N. C. Mickelson was a bankrupt, and on plaintiff's part to secure a preference in the estate of the said N. C. Mickelson, and that by reason thereof the execution of said note and mortgage, as against the several claims herein mentioned, and particularly the claims of P. J. Johnson, D. F. Hagans, the Idaho Lumber Company, Ltd., a corporation, Geo. A. Lowe Company, a corporation, and E. E. Rodgers and F. C. Rodgers in the respective amounts due them on their said several mechanic's liens and said mortgage, as hereinbefore specifically mentioned, was and is null and void, and of no force and effect as against said persons and said claims; that all of said several mechanic's liens and said mortgage are long prior in point of time to plaintiff's said mortgage, and that they are therefore senior, superior and paramount liens upon said premises to plaintiff's said mortgage, and were valid and subsisting liens against said premises long prior to the execution of plaintiff's said mortgage.

PRAYER.

Wherefore, this defendant prays that plaintiff's said mortgage be adjudged and decreed null and void for the reason that the same was given to secure and obtain a preference in the estate of the said N. C. Mickelson, a bankrupt; that in event the court should hold said mortgage as a valid and subsisting lien

against the estate of said N. C. Mickelson that it be adjudged and decreed to be junior and inferior and of no force and effect as against the title and interest of this defendant; that the title to said premises described in subdivision (1) of paragraph eleven be adjudged and decreed free and clear from plaintiff's said claim and demand arising by reason of its said mortgage; that the title thereto be quieted in this defendant, and that as against this defendant and all of the parties represented by it as such trustee, plaintiff take nothing by reason of its said complaint, and that defendant be discharged herefrom with its costs herein incurred, and that the court afford this defendant such further relief in the premises as may be meet and proper.

WILLIAM A. LEE and
JOHN W. JONES,
Attorneys for said Defendant.
Residence: Blackfoot, Idaho.

State of Idaho,
County of Bingham,—ss.

C. V. Fisher, being first duly sworn, upon oath says: That he is an officer of the said defendant, D. W. Standrod & Company, a corporation, to-wit, the Cashier thereof, and that as such officer he makes this verification: That he has read the foregoing answer, and that he believes the facts therein stated to be true.

C. V. FISHER.

Subscribed and sworn to before me this the 22nd day of September, 1913.

(Seal) C. S. BEEBE,
Notary Public.

(Endorsed): Filed Sept. 24, 1913. A. L. Richardson, Clerk.

In the District Court of the United States, for the District of Idaho, Eastern Division.

UTAH IMPLEMENT-VEHICLE COMPANY, a Corporation,

Plaintiff,

vs.

FRANK C. BOWMAN, as Trustee in Bankruptcy of the Estate of N. C. Mickelson, a Bankrupt, and D. W. STANDROD & COMPANY, a Corporation, as Trustee for Idaho Lumber Company, Ltd., Geo. A. Lowe Company, E. E. Rodgers and F. C. Rodgers,

Defendants.

Reply of Plaintiff to Set-off and Counterclaim of D. W. Standrod & Company, Trustee.

Comes now the above named plaintiff and for reply to the set-off and counterclaim contained in the answer, filed herein of the defendant, D. W. Standrod & Company, as Trustee, admits, denies and alleges as follows:

I.

The plaintiff admits that liens were filed and the Rodgers mortgage executed and delivered as alleged in paragraph numbered one of the said set-off and

counterclaim and that thereafter and within the time allowed by law said several parties therein mentioned each severally commenced actions to foreclose their respective liens and said mortgage and that thereafter by order of Court said actions were consolidated and proceeded to final judgment, but this plaintiff denies that it was a party to said suits, or any of them and in that behalf this plaintiff alleges that it was not a party to any of said suits and this plaintiff alleges that its said mortgage, described in its complaint herein, was executed, acknowledged and delivered and filed for record in the office of the Recorder of Bingham County, Idaho, prior to the filing of any of said liens and prior to the commencement of any of said actions for the foreclosure of said liens and mortgage.

II.

The plaintiff alleges that the alleged lien of P. J. Johnson set forth and described in paragraphs numbered two, three, four and five of said counterclaim and set-off and any and all right of action for the foreclosure thereof is barred as against this plaintiff for the reason that no action was brought for the foreclosure of same against this plaintiff within two years from the time of the completion of the work for which said lien was claimed, nor within two years after the filing of said lien as required by the provisions of Section 5118 of the Idaho Revised Codes.

III.

The plaintiff alleges that the alleged lien of D. F. Hagans set forth and described in paragraphs numbered six, seven and eight of said counterclàim and set-off and any and all right of action for the foreclosure thereof is barred as against this plaintiff for the reason that no action was brought for the foreclosure of same against this plaintiff within two years from the time of the completion of the work for which said lien was claimed, nor within two years after the filing of said lien as required by the provisions of Section 5118 of the Idaho Revised Codes.

IV.

The plaintiff alleges that the alleged lien of the Idaho Lumber Company, Ltd. set forth and described in paragraphs numbered nine, ten and eleven of said counterclaim and set-off and any and all right of action for the foreclosure thereof is barred as against this plaintiff for the reason that no action was brought for the foreclosure of same against this plaintiff within two years from the time of the completion of the work for which said lien was claimed, nor within two years after the filing of said lien as required by the provisions of Section 5118 of the Idaho Revised Codes.

V.

The plaintiff alleges that the alleged lien of Geo. A. Lowe Company set forth and described in paragraphs numbered twelve, thirteen, fourteen, fifteen and sixteen of said counterclaim and set-off and any

and all right of action for the foreclosure thereof is barred as against this plaintiff for the reason that no action was brought for the foreclosure of same against this plaintiff within two years from the time of the completion of the work for which said lien was claimed, nor within two years after the filing of said lien as required by the provisions of Section 5118 of the Idaho Revised Codes.

VI.

This plaintiff not having sufficient information or belief to enable it to answer the same and placing its denials upon that ground and in order to put the defendant, D. W. Standrod & Company, as Trustee. upon its proof as to any right or lien it may have under said Rodgers mortgage the plaintiff denies that said N. C. Mickelson has not paid said note, nor any part thereof, or any interest thereon, or that N. C. Mickelson failed or neglected to pay the taxes upon said premises for the year 1911 amounting to the sum of Two Hundred Six and 63-100 ($206.63) Dollars, or that said E. E. Rodgers and F. C. Rodgers, or either of them paid on December 30th, 1911, or at any other time, said or any amount of taxes, or that by reason of N. C. Mickelson's failure to pay said interest and taxes as they became due the principal sum expressed in said note was immediately due, or that the said E. E. Rodgers and F. C. Rodgers, or either of them, elected to or did elect to declare the whole amount secured by said mortgage due and payable, or that at the time of the sale mentioned in said set-off and counterclaim on January

4th, 1912, there was due and unpaid or is now due or unpaid, on said note and mortgage, the sum of Forty-one Hundred Nine and 39-100 ($4109.39) Dollars or any other sum or amount whatever.

VII.

The plaintiff denies that Three Hundred ($300.00) Dollars is a reasonable Attorney's fee for the foreclosure of said Rodgers mortgage, or that in the event of foreclosure thereof that any amount greater than One Hundred and Fifty ($150.00) Dollars is a reasonable Attorney's fee for the foreclosure of said mortgage.

VIII.

As to whether the defendant, D. W. Standrod & Company, at or about the time of the purchase of said premises by it paid the sum of Eighty-four and 04-100 ($84.04) Dollars as taxes on said premises described in sub-division one, to protect said property from sale, this plaintiff has no information or belief sufficient to enable it to answer and placing its denial upon that ground the plaintiff denies that any such payment was made and further in that behalf this plaintiff alleges that subsequent to the commencement of this action it was stipulated and agreed between the plaintiff and the defendant, D. W. Standrod & Company, as Trustee, in writing that the defendant, D. W. Standrod & Company, as Trustee, was in the possession of the said real estate situate in Shelley, Idaho, described in plaintiff's complaint and receiving the rents and profits there-

of and said defendant agreed with the plaintiff that it would apply the rents received from said property by it to the payment of taxes, which had been or might thereafter be assessed against said property and to the payment of insurance premiums for the insurance on said premises and that it would hold any surplus to abide the order of the Court in this action.

IX.

The plaintiff admits that the said note and mortgage given by N. C. Mickelson and Ruby Mickelson to this plaintiff on February 6th, 1911, for the sum of Twelve Thousand Five Hundred Seventy-five and 75-100 ($12,575.75) Dollars was by said makers executed to the plaintiff in payment of or to secure a pre-existing debt for goods, wares and merchandise purchased by said N. C. Mickelson from the plaintiff and admits that part of said indebtedness had existed for some time previous thereto in the form of an open account, but denies that all of said indebtedness was in the form of an open account for some time previous thereto and in that behalf alleges that nearly all of said indebtedness was represented by other notes which had been theretofore executed and delivered to the plaintiff by the said N. C. Mickelson.

X.

The plaintiff denies that the execution of said note and mortgage of the plaintiff was for the purpose of giving to the plaintiff a preference over and

above the other creditors of said N. C. Mickelson or that the same was taken by the plaintiff with the full knowledge, or any knowledge, on its part that at the time of the execution of said note and mortgage the said N. C. Mickelson was a Bankrupt, or on the part of the plaintiff to secure a preference in the estate of said N. C. Mickelson, or that by reason thereof the execution of said note and mortgage as against the several claims mentioned in said set-off and counterclaim, or any of them, or particularly the claims of P. J. Johnson, D. F. Hagans, the Idaho Lumber Company, Ltd., a corporation; Geo. A. Lowe Company, a corporation, and E. E. Rodgers and F. C. Rodgers, or any of them, in the respective amounts, or any amounts due to them, or any of them, on their said several mechanic's liens and said mortgage, or any of them, was or is null and void, or null or void or of no force and effect, or of no force or effect as against said persons, or any of them or said claims or any of them, or that said N. C. Mickelson was a bankrupt at the time of the execution of plantiff's said note and mortgage.

XI.

The plaintiff admits that the said Rodgers mortgage was prior in point of time to plaintiff's said mortgage and that for any amount due or unpaid thereon it is senior, superior and paramount as a lien to plaintiff's mortgage, but the plaintiff denies that all or any of said several mechanic's liens are prior in point of time to plaintiff's said mortgage, or that they, or any of them are senior, superior or

paramount liens upon said premises to plaintiff's said mortgage or that said liens or any of them were valid or subsisting liens against said premises long prior or at all prior to the execution of plaintiff's said mortgage.

XII.

Further answering said set-off and counterclaim this plaintiff alleges that prior to the commencement of this section and subsequent to the appointment and qualifying of the defendant, Frank C. Bowman as Trustee of N. C. Mickelson, a bankrupt, the said Frank C. Bowman, as such Trustee, instituted an action in the District Court of the United States for the District of Idaho, Eastern Division, against this plaintiff wherein said Bowman, as Trustee, sought to set aside the mortgage of the plaintiff, described in its complaint herein, as being a preference in favor of this plaintiff over and above other creditors of the said N. C. Mickelson on the ground that such mortgage was executed and delivered within four months of the adjudication of the said N. C. Mickelson, by said Court, as a Bankrupt and that such mortgage was executed and received with the intention, on the part of the parties to said mortgage of creating a preference in favor of this plaintiff and that the plaintiff knew when it received said mortgage that the effect thereof would be to create a preference. That afterwards a settlement was agreed upon between the parties to said action, in writing, whereby in consideration of Eight Hundred ($800.00) Dollars paid to said Frank C. Bow-

man, as Trustee, as aforesaid, by this plaintiff, the said Frank C. Bowman, as such Trustee, agreed to dismiss the said suit to set aside plaintiff's said mortgage as a preference and consented to an order in the Bankruptcy proceedings of said Mickelson, a Bankrupt, permitting a suit to be brought by this plaintiff to reform its said mortgage and to foreclose the same and agreed to enter an appearance in such action to be brought by the plaintiff to reform and foreclose its said mortgage and agreed that he would not defend such suit to be brought by the plaintiff to reform and foreclose its said mortgage and afterwards in pursuance of said stipulation the said Frank C. Bowman, as such Trustee, dismissed the said action, which he had theretofore brought to set aside plaintiff's said mortgage as a preference and an order of dismissal thereof was entered by the Court wherein the said action was pending in pursuance of the said stipulation and thereafter the plaintiff instituted this action under the terms of the said stipulation to reform and foreclose its said mortgage.

Wherefore, having fully answered said set-off and counterclaim the plaintiff prays that it may have the relief prayed for in its complaint herein and that the set-off and counterclaim of the defendant may be dismissed with prejudice.

CLENCY ST. CLAIR and
CHARLES C. ST. CLAIR,
Attorneys for Plaintiff,
Residence: Idaho Falls, Idaho.

State of Idaho,
Bonneville County,—ss.

Clency St. Clair being first duly sworn upon his oath says: That he is one of the Attorneys for the plaintiff in the above entitled action; that said plaintiff is a Utah Corporation and that none of its officers are now within the State of Idaho wherein this affiant resides and for the reason this verification is made by this affiant; that he has read the foregoing reply and knows the contents thereof and that he believes the facts therein stated to be true.

CLENCY ST. CLAIR.

Subscribed in my presence and sworn to before me this 23rd day of September, 1913.

(Seal) J. J. JOHANNESEN,
Notary Public.

(Endorsed): Filed Sept. 25, 1913. A. L. Richardson, Clerk.

In the District Court of the United States, for the District of Idaho, Eastern Division.

UTAH IMPLEMENT-VEHICLE COMPANY, a Corporation,

Plaintiff,

vs.

FRANK C. BOWMAN, as Trustee in Bankruptcy of the Estate of N. C. Mickelson, a Bankrupt, and D. W. STANDROD & COMPANY, a Corporation, as Trustee for the Idaho Lumber Company, Ltd., George A. Lowe Company, E. E. Rodgers and F. C. Rodgers,

Defendants.

Supplemental Pleading.

Comes now the above named defendant, D. W. Standrod & Company, and asks leave of court to file this supplemental pleading, and as grounds therefore alleges:

I.

That issue was joined in this cause about the 23rd day of September, 1913, by the filing of plaintiff's reply; that this defendant was then first advised of the facts alleged in the 12th paragraph of said reply, and by reference thereto adopts and alleges the facts as therein stated as fully as if the same were set forth herein *haec verba.*

II.

That on the 26th day of August, 1911, the said Frank C. Bowman, Trustee, above named, commenced an action in this court against the Utah

Implement-Vehicle Company, the above named plaintiff in this action, for the purpose of setting aside and vacating the mortgage sought to be foreclosed in this action, on the ground, and for the reason, that the same was, and is voidable and in conflict with the Act of Congress entitled "An Act to establish a uniform system of bankruptcy throughout the United States," and particularly Sections 60a and 60b thereof, for that said mortgage had been given by the said N. C. Mickelson for a previous existing indebtedness upon open account for merchandise, when he was a bankrupt, within four months of his having filed a petition in bankruptcy, and been adjudged a bankrupt, for the purpose, and with the intention, of enabling the said Utah Implement-Vehicle Company to obtain a greater percentage of its debts than any other of its creditors of the same class, and the said Utah Implement-Vehicle Company having obtained and taken such mortgage when it had reasonable cause to believe that an enforcement of the same would effect a preference in its favor over other creditors of such bankrupt of the same class, all of which more fully appears from the fact as alleged in said Bill of Complaint filed in said action, the same being hereby referred to, and said facts as therein alleged being made a part hereof.

III.

That subsequently and at great expense to said estate, said trustee caused to be taken in said action the deposition of said N. C. Mickelson, who had, soon

after filing his petition in bankruptcy, removed to Prince Rupert, British America, and he still resides beyond the jurisdiction of the United States; that said deposition is now a part of the records of this court in said cause, and tends to prove the truth of the allegations of said Bill of Complaint; that thereafter and about April, 1913, plaintiff herein, being defendant in said action, paid to said Frank C. Bowman, as Trustee, the sum of $800.00 in consideration that he, the said Frank C. Bowman, would dismiss said action and agree to enter an appearance in this action, the same not then having been commenced, and would further agree not to defend this suit, as more particularly alleged in the 12th paragraph of the reply herein, and the stipulation made and entered into by said parties, which is hereby adopted and made a part hereof by reference thereto; that this defendant had no knowledge of the dismissal of this action until about the time of the filing of plaintiff's reply herein, and that it is informed, and believes, and alleges the fact to be that the mortgage sought to be foreclosed herein was given for an indebtedness existing upon open account by the said N. C. Mickelson to the said Utah Implement-Vehicle Company, and that an account had been given, which indebtedness had arisen by reason of merchandise furnished by the Utah Implement-Vehicle Company to the said N. C. Mickelson, and which it subsequently reclaimed to the extent of $4000.00, on the ground that the same was consigned goods, and that said mortgage was therefore $4000.00 in excess of the

actual indebtedness, owing on said open account by the said N. C. Mickelson to the said Utah Implement-Vehicle Company; that up to about the time said action to set aside said mortgage was dismissed, the Trustee and his counsel had expressed the belief that they would be able to vacate and set aside said mortgage for the reasons alleged in said Bill of Complaint.

IV.

That the action of the said Frank C. Bowman and of this plaintiff in so stipulating and agreeing to dismiss said action brought to vacate and set aside said mortgage, was wrongful and in prejudice of this defendant's rights and proved as a constructive fraud upon it, and for the reasons herein stated, the said Trustee should be required to proceed to final judgment upon the issues of facts presented in said action; that the Utah Implement-Vehicle Company claim and assert in this action that this defendant is without right to defend this said action against it upon the grounds of unlawful preference, or for any reasons alleged herein, because such right and authority exists only on the part of said Trustee in Bankruptcy, and that it having procured said Trustee to dismiss this action for said agreed consideration of $800.00, that this defendant is without remedy in the premises.

V.

That this defendant refers hereby to said Bill of Complaint filed by said Trustee about August 29,

1911, and the stipulation entered into to dismiss said action in April, 1912, and the said deposition taken at Prince Rupert, and all of the files and records of that action, and the same are hereby made a part of this Supplemental Pleading, and are set forth as grounds for the relief herein prayed for.

Wherefore, this defendant prays that said stipulation and agreement between said Trustee and the plaintiff herein, whereby it was agreed that this plaintiff should pay to said Trustee the sum of $800.00 to dismiss said action, and to have said Trustee further agree that he would not defend this action, be set aside and vacated, and that the order permitting such dismissal be set aside and vacated; that this Court direct said Trustee to prosecute said action to final judgment, or in the event that he does not prosecute said action further, that this defendant be permitted to do so, and that pending the determination of said issues, the proceedings to foreclose plaintiff's mortgage in this action be stayed and held in abeyance; that this defendant be permitted to offer all of the records and files, including the deposition of the said N. C. Mickelson, in support of the action to vacate and set aside said mortgage, in so far as the same may be material and relevant to said issues.

WILLIAM A. LEE,

Attorneys for defendant, D. W. Standrod & Company.

State of Idaho,
County of Bingham,—ss.

William A. Lee, being first duly sworn, on oath deposes and says: That he has read the foregoing Supplemental Pleading; that he knows the facts therein alleged, and that said facts as stated in said Pleading are true, as he verily believes.

That he has mailed copies of the foregoing Pleading to St. Clair & St. Clair, Attorneys for plaintiff, and O. E. McCutcheon, Attorney for the Trustee, postage prepaid, to Idaho Falls, Idaho.

WILLIAM A. LEE.

Subscribed and sworn to before me this the 18th day of October, 1913.

(Seal) C. S. BEEBE,
Notary Public.

(Endorsed): Filed Oct. 20, 1913. A. L. Richardson, Clerk.

In the District Court of the United States, for the District of Idaho, Eastern Division.

UTAH IMPLEMENT-VEHICLE COMPANY, a Corporation,

Plaintiff,

vs.

FRANK C. BOWMAN, as Trustee in Bankruptcy of the Estate of N. C. Mickelson, a Bankrupt, and D. W. STANDROD & COMPANY, a Corporation, Ltd., GEO. A. LOWE COMPANY, E. E. RODGERS and F. C. RODGERS,

Defendants.

Supplemental Pleading on Behalf of Frank C. Bowman, Trustee.

This matter having come on to be heard informally in open court on the 15th day of October, 1913, at Pocatello, Idaho, on the application of D. W. Standrod & Company, Trustee, presented by W. A. Lee, attorney for said D. W. Standrod & Company; by leave of the court and with the consent of all parties, in open court, the said Frank C. Bowman, Trustee, by O. E. McCutcheon, his attorney, made a statement of facts to be considered as in the nature of a supplemental pleading and, it being further understood that after the said W. A. Lee as attorney for the said D. W. Standrod & Company should file and serve his supplemental pleading and the same to be considered as of this date, to-wit, October 15th, 1913, that the said O. E. McCutcheon as attorney for the said Frank C. Bowman, Trustee, should prepare and file a supplemental pleading covering the matters

undertaken to have been so stated by him orally in open court as aforesaid, and in that behalf comes now the said Frank C. Bowman, Trustee, and files this his supplemental pleading, that is to say:

I.

The said Frank C. Bowman, Trustee, admits the allegations in paragraph I of the supplemental pleading of the said D. W. Standrod & Company.

II.

Answering paragraph II of the said last mentioned supplemental pleading, said defendant Frank C. Bowman, Trustee, admits the commencement on August 26th, 1911, of the action in this court for the purpose of setting aside the mortgage mentioned running to the plaintiff herein on the ground that the same was an unlawful preference and in violation of the Act of Congress mentioned in said paragraph II.

III.

Defendant admits the taking of the testimony of N. C. Mickelson at Prince Rupert, British Columbia, in substance as alleged in paragraph three of the last mentioned supplemental pleading and that the deposition of said N. C. Mickelson is on file in this court, but as to whether the said deposition tends to prove the truth of the allegations in the Bill of Complaint of this defendant in the suit to set aside said mortgage as above mentioned, this defendant submits that the same is a question of law and on that

point, therefore, makes no answer; this defendant admits that in April, 1913, the plaintiff herein paid the said Frank C. Bowman, as Trustee, the sum of Eight Hundred ($800.00) Dollars, but denies that the same was alone in consideration that this defendant would dismiss his said action to set aside said mortgage as aforesaid, but was in consideration of the settlement of all matters of difference between the said Frank C. Bowman as Trustee and this plaintiff, and that said matters in difference included the suit to set aside the mortgage as aforesaid and the facts in relation to certain goods alleged to have been consigned by the said plaintiff to N. C. Mickelson & Company mentioned in said paragraph three and in respect to which this defendant in this pleading makes a statement of the facts of said settlement and denies the allegations in said paragraph three and each and every of the same which are inconsistent with the said statement of facts herein contained.

IV.

This defendant denies that the settlement so made between him and this plaintiff whereby the said action to vacate and set aside said mortgage was dismissed was wrongful or that the same was in prejudice of the rights of said D. W. Standrod & Company or of any other party herein and as to all other allegations in paragraph four of said last mentioned supplemental pleading this defendant is advised that they are propositions of law and, therefore, this defendant makes no further answer thereto.

V.

This defendant joins in the reference to other pleadings and papers in this court relating to the subject matter hereof.

VI.

Answering with particular reference to the statements in paragraph three of the said supplemental pleading of the said D. W. Standrod & Company, Trustee, and making a statement of the facts in relation to the same, this defendant states and alleges as follows:

That at the time, to-wit, February 6, 1911, when the said N. C. Mickelson, who afterwards became bankrupt, gave the mortgage to the plaintiff herein, that all the mortgaged real estate covered by said mortgage was encumbered by prior mortgages which with interest and costs, both accrued and prospective, should be expected to amount to over Five Thousand ($5,000) Dollars, which said prior mortgages have never been contested or challenged.

That the principal item of real estate mentioned in said mortgages was a certain building lot with the building thereon situated in the Village of Shelley, which building was constructed within the year previous to the bankruptcy of said Mickelson and that at or about the time of the said Mickelson becoming a bankrupt lien claims had been filed against said lots and building by the parties mentioned in the files and records hereinbefore referred to and also by Crane Company, a corporation.

That at the time, to-wit, August 26th, 1911, when this defendant began his suit to set aside as an unlawful preference the mortgage so given to the plaintiff, no suit had been commenced to determine and satisfy such lien claims except on behalf of the said Crane Company, which was commenced April 8, 1911, and afterwards ripened into a judgment of over Thirteen Hundred ($1300) Dollars.

That the said Mickelson, at the time of his bankruptcy, resided at Shelley aforesaid and that shortly after his adjudication of bankruptcy he left his said home and went to the Dominion of Canada and resided for a short time in Calgary and other points before removing to Prince Rupert.

That this defendant procured certain communications to be made with the said Mickelson after his departure from Shelley as aforesaid, and that the nature of such communications led this defendant to believe that on a trial of an issue of whether the mortgage so given to the plaintiff was an unlawful preference the said Mickelson would testify favorably to this defendant.

That thereafter, and during the winter of 1911 and 1912 arrangements were made by stipulation for taking the testimony of said Mickelson in Prince Rupert to which point he had then removed and that said testimony was in fact taken on or about the 27th day of March, 1912, there being present to assist in the taking thereof the manager of the plaintiff and Mr. Erwin, its attorney from Salt Lake and the attorney for this defendant; that the testimony of

said Mickelson was a disappointment to this defendant and both this defendant and his attorney afterwards considered that the successful outcome of the said suit to declare the plaintiff's mortgage an unlawful preference was doubtful and deny that they ever expressed any different opinion at any time after the taking of said testimony.

That on account of the absence of this defendant's attorney during the spring and summer of 1912 there was no opportunity for a full consultation in reference to the further conduct of his said suit until about the middle of September, 1912.

That at that time the said lien claims had ripened into judgments; that neither of said lien claimants nor the owners or holders of any of the prior mortgages above mentioned nor the plaintiff in this suit had filed claims as general creditors of said bankrupt.

That in the judgment of this defendant the said liens and prior mortgages would substantially absorb and use up the mortgaged assets and that the condition of the said bankrupt's estate was such that in substance it could not even, if thought advisable, redeem the mortgaged property from the prior incumbrances and that in this state of the case the only way reasonably practicable by which this defendant could reap any benefit from the circumstances for the general creditors of the bankrupt estate would be by means of the claim which this defendant asserted against the plaintiff in relation to the consigned goods, so called, and concerning which

a statement appears in paragraph three of the said supplemental pleading of said D. W. Standrod & Company and in respect to said consigned goods the position taken by this defendant was as follows:

(1). That the purchase price of the same or a portion thereof was included within the plaintiff's said mortgage and if this claim were established that it would amount to a waiver of the claim of plaintiff to the title to so much of said consigned goods the price of which was so included in the consideration of said mortgage.

(2). That if the inclusion of the price of such or any of said consigned goods in the consideration of the plaintiff's mortgage could not be held to be a waiver of plaintiff's claim of title thereto, nevertheless, by taking and appropriating the same there had been paid a portion of said mortgage and that the plaintiff either should reduce the amount of its mortgage or pay to this defendant the price of such consigned goods in so far as the purchase price thereof was included in the consideration of said mortgage.

This defendant, under advice of his said counsel, concluded to abandon the effort to have the plaintiff's mortgage declared an unlawful preference provided he could make a settlement in relation to said consigned goods.

Negotiations were thereupon opened between this defendant and the plaintiff for a settlement and it was arranged that the defendant should have access to the books of the plaintiff for the purpose of de-

termining how much if any of said consigned goods were included in the mortgage as aforesaid, whereupon this defendant went to Salt Lake and examined the books of the plaintiff and reported to his counsel, as his opinion, that about Twenty-eight Hundred ($2800) Dollars of the price of said consigned goods was included within the consideration of the plaintiff's said mortgage. This conclusion was strenuously denied and opposed by the plaintiff, who insisted that none or at least no substantial part of the purchase price of said consigned goods were so included within the consideration of its said mortgage.

The negotiations above set forth occupied such time that the case could not be tried in the October term of 1912 and by consent was continued over to the April term of 1913, at which time no settlement or understanding having been reached, the case was upon the calendar of the said April term, 1913, for trial and the counsel for the respective parties being present at Pocatello on the day of the opening of the court, negotiations for a settlement were renewed and resulted in an agreement by this defendant to dismiss the suit, to have the plaintiff's mortgage declared an unlawful preference and to settle the outstanding claims in relation to the said consigned goods by the payment by the plaintiff to this defendant of Eight Hundred ($800) Dollars.

The terms of said proposed settlement were orally reported to the court counsel for both parties being present whereupon the Court announced that inas-

much as this defendant and his counsel believed such settlement would be for the best interests of the bankrupt's estate the same would be approved when the proper papers were made and filed.

This defendant states further as his opinion, basing the same upon his knowledge and judgment of the transactions, that he made the best settlement that it was possible to be obtained and that as to the claim that the same was fraudulent as to the said D. W. Standrod & Company, Trustee, this defendant states that in his opinion at the time and now the mortgage to the plaintiff was based upon a full consideration as stated in said mortgage and continued as between the parties thereto a bona fide security for its full consideration as stated therein except as the same should be reduced by reason of the price and value of the whole or a portion of such consigned goods. That the further prosecution of said suit to have said mortgage declared an unlawful preference in view of all the circumstances amounted, in substance, to putting the general estate of said bankrupt to expense for the purpose of determining priorities between creditors having apparent security for their several claims and none of which creditors had filed any claims or were in any manner general creditors of the said estate; that the said estate had no substantial interest in the subject matter or in the question of priorities between secured creditors who were not general creditors and therefore it was just and equitable for this defendant to withdraw such suit and not to prosecute it further

and to leave the priorities between such secured creditors to be determined in proceedings to be brought by themselves for that purpose.

O. E. M'CUTCHEON,
Attorney for Frank C. Bowman, Trustee.

State of Idaho,
County of Bonneville,—ss.

O. E. McCutcheon being duly sworn deposes and says: That he has read the foregoing supplemental pleading, that he has a more intimate knowledge of the facts therein stated than the said Trustee and, therefore, vertifies the same on his behalf, and that affiant believes the facts stated in said pleading to be true.

O. E. M'CUTCHEON.

Subscribed and sworn to before me this 25th day of October, 1913.

(Seal) OTTO E. M'CUTCHEON,
Notary Public.

(Endorsed): Filed Oct. 27, 1913. A. L. Richardson, Clerk.

In the District Court of the United States, for the District of Idaho, Eastern Division.

UTAH IMPLEMENT-VEHICLE COMPANY, a Corporation,

Plaintiff,

vs.

FRANK C. BOWMAN, as Trustee in Bankruptcy of the Estate of N. C. Mickelson, a Bankrupt, and D. W. STANDROD & COMPANY, a Corporation, as Trustee for the Idaho Lumber Company, Ltd., George A. Lowe Company, E. E. Rodgers and F. C. Rodgers,

Defendant.

Order.

On this the 15th day of October, 1913 this cause being heard in open court upon the defendant's, D. W. Standrod & Company's, Supplemental Pleading, the same being tendered for filing by William A. Lee, Esq., its attorney, and the court, being fully advised in the premisees, hereby denies the relief prayed for in said Pleading, but upon counsel's request for further time to redraft the same, and eliminate errors, and serve copies upon plaintiff's counsel and upon counsel for the Trustee, it is ordered that he may do so, and vertify the same, and that it may be filed and considered as a part of the records in this cause as of this date, and that exceptions may be allowed defendant upon the court's denial of the relief so prayed for.

Done in open court as of the 15th day of October, 1913.

FRANK S. DIETRICH,
Judge.

(Endorsed): Filed Oct. 15, 1913. A. L. Richardson, Clerk.

In the District Court of the United States, for the District of Idaho, Eastern Division.

UTAH IMPLEMENT-VEHICLE COMPANY, a Corporation,
Plaintiff,

vs.

FRANK C. BOWMAN, as Trustee in Bankruptcy of the Estate of N. C. Mickelson, a Bankrupt, and D. W. STANDROD & COMPANY, a Corporation, as Trustee for Idaho Lumber Company, Ltd., Geo. A. Lowe Company, E. E. Rodgers and F. C. Rodgers,
Defendants.

Decision.

NOVEMBER 18, 1913.

ST. CLAIR & ST. CLAIR,
Attorneys for Plaintiff.

O. E. M'CUTCHEON,
Attorney for defendant Bowman.

WILLIAM A. LEE and JOHN W. JONES,
Attorneys for defendant D. W. Standrod & Company.

DIETRICH, District Judge:

A very brief statement of the facts will suffice to make clear the nature of the single question which has been argued and submitted for decision. The suit is brought to foreclose a mortgage given to the plaintiff by N. C. Mickelson on the 6th day of February, 1911, to secure the payment of a promissory note of the same date for $12,575.75, which mortgage was, on February 21, 1911, recorded in the office of the County Recorder of Bingham County, Idaho, where the property is situate. Mickelson later became a bankrupt, and his Trustee is made a party defendant. The other defendant, D. W. Standrod & Company, a corporation, is the Trustee for the Idaho Lumber Company and others, who claim liens upon or equitable interests in the mortgaged property. It is unnecessary to explain the nature of this trust further than to say that the interests of all beneficiaries thereof save one originated in mechanics' liens for services rendered and materials furnished in the construction of a building upon a portion of the mortgaged premises. The original validity of these liens is not now called into question, and for the purposes of the decision it is assumed that in due time the several parties filed their claims of lien in the form prescribed by law, and that within the statutory period they commenced proceedings in the proper state district court to enforce the liens, and that such suits were consolidated, and later a decree was entered adjudging the several claims to be liens upon the property of the mortgagor, and that thereafter the property was duly

sold to satisfy the amounts adjudged to be due, at which sale Standrod & Company became the purchaser, as Trustee for all concerned. It is further assumed that while some of these claims were filed with the Recorder shortly before and some shortly after the execution and recording of the plaintiff's mortgage, by relation the liens may have all antedated the lien of the mortgage. Although its mortgage was of public record when they were commenced, the mortgagee, the plaintiff here, was not made a party to the lien suits, and its contention now is that therefore not only is it not bound by such foreclosure proceedings, but also that through lapse of time the liens have been lost, and as to it they are no longer of any validity. The precise question, therefore, is, whether or not a lien claimant under the mechanics' lien law of Idaho loses his priority of lien as against a junior mortgagee, by foreclosing his lien without bringing in and making a party to such foreclosure suit the mortgagee, the period provided by the statute in which proceedings may be commenced for the enforcement of the lien, expiring during the pendency of the suit.

A mechanic's lien is wholly the creature of statute, and therefore the question must be referred to the statutory law of the state. In construing such statutes two principles are to be borne in mind: Upon the one hand, they are to be construed liberally, with a view to effecting their object and doing substantial justice, and, upon the other hand, we must take them as we find them, and we are not at liberty to add to

or subtract therefrom. The question of policy is one exclusively for the Legislature, and it is our function only to ascertain, if possible, the intent of the statutes, and then administer them in such a manner as to give effect thereto.

Section 5110 of the Idaho Revised Codes provides generally that every person performing labor upon, or furnishing materials to be used in, the construction of a building, has a lien upon the same for the work done or materials furnished. Section 5114 provides that such liens are preferred to other incumbrances attaching subsequent to the time when the building was commenced or the work done or materials furnished. Section 5115 requires that any person claiming a lien shall, within the period therein prescribed, file his verified claim therefor, containing certain statements of fact, in the office of the County Recorder of the county in which the property is situated. Section 5118 is as follows: "No lien provided for in this chapter binds any building, mining claim, improvement or structure for a longer period than six months after the claim has been filed, unless proceedings be commenced in a proper court within that time to enforce such lien; or, if a credit be given, then six months after the expiration of such credit; but no lien shall continue in force under this chapter for a longer period than two years from the time the work is completed, or credit given, unless proceedings to enforce the same shall have been commenced." Section 5124 provides that the general rules of civil procedure prescribed by

the codes shall apply in proceedings to foreclosure liens. No other provisions are thought to have any material relation to the question under consideration, and it is apparent that, of those referred to, Section 5118, which is set out in full, is of primary importance. Admittedly, if no action at all is commenced within the period therein named, the lien lapses and absolutely ceases to exist as to all the world. The contention of the defendant, however, is that, under this section, "proceedings" are "commenced" when a suit to foreclose the lien is brought by the lienor against the owner of the property upon which the lien is claimed. The reasoning is that, in a suit of foreclosure of a mortgage or of a mechanic's lien, the owner of the title to the property is the only indispensable party, and that while others may be proper parties, their presence is not essential to the validity of the decree which may be entered therein. It is doubtless true that the owner of the property is the only indispensable party to such suit, and in a case where he is the sole defendant the decree is not void; it is effective to the extent of cutting off his rights and estate, and doubtless a deed issued to a purchaser upon a proper sale had under the provisions of such decree operates to transfer his title to the purchaser. But, upon the other hand, it is also undoubtedly the case that incumbrancers who are not made parties to such suit are in no wise affected by the decree, and their liens remain unimpaired. If not entirely aside from the point, therefore, it is certainly not conclusive of the question under con-

sideration to say that the decree entered in the consolidated case in the state court, foreclosing the liens of the several claimants, is valid. Likewise a decree would be valid if the suit were prosecuted against but one of several part owners of the property; but in such case what would be the status of the lien as touching the interests of the other part owners? So the plaintiff here, conceding that the decree in the former suit is conclusive upon the parties thereto, contends only that it is in no wise bound thereby, and that, the time having long since elapsed for foreclosing the liens against it, they have therefore ceased to exist, so far as its interest is concerned. And it must be conceded that its rights were not, and could not be, affected by a suit to which it was not a party. The record in that case cannot operate even as *prima facie* evidence against it. If it were assumed that the lien claimants are not prejudiced by the lapse of time, they could not now bring forward the decree as the measure or evidence of their rights, but as against the plaintiff they would be compelled to make proof *de novo* in support of their claims, the same as if such decree had never been entered. *Hassall v. Wilcox*, 150 U. S. 493. In that view it follows that no proceedings were ever commenced to enforce the liens against the interest of this plaintiff.

The real question, therefore, is, whether or not the commencement of a proceeding against one party in interest operates to keep alive the lien as to all parties in interest. It will be observed that Section 5118 does not purport in terms to prescribe who shall be

made parties to the suit, either plaintiff or defendant, and in giving to it a practical construction it is necessary to interpolate a designation or description of the parties. Defendant would make the clause, "unless proceedings be commenced in a proper court, etc.", read, "unless proceedings be commenced in a proper court *against the owner of the property*, etc.", whereas the plaintiff would have it read, "unless proceedings be commenced in a proper court *against the person or persons against whose interests the lien is asserted, etc.*" After the most earnest consideration, I cannot escape the conclusion that this latter view is in substantial accord with the true intent of the legislature. No lien, it is provided, shall bind the property for a period of more than six months, "unless proceedings be commenced in a proper court within that time to enforce such lien." But proceedings to enforce the lien against what and against whom? The natural answer is, the lien against the right or interest of anyone against whose right or interest the lien is claimed or asserted. The proceeding is one to foreclose a right, an estate, an interest, and it should be instituted against all those whose rights, estates or interests are claimed to be subordinate, and which may therefore be subject to foreclosure. Surely it is not sufficient merely to bring in such parties as will enable the plaintiff to procure some sort of valid decree. As already suggested, a suit by the claimant against one of several co-owners of the property might result in a valid decree; it

would establish the lien as against the estate of such defendant, and the ensuing sale would effectually foreclose his right. But by no one, as I understand, is it contended that such a proceeding would operate to keep alive the lien upon the interests of other part owners. If, then, such an interest remains unaffected thereby, why should an exception be made in the case of a mortgagee or the holder of an estate or interest of a different character? The proceeding is to be commenced to enforce the lien, not against a single specified estate or interest, but against any estate, interest, or right which the lienor claims to be adverse and subordinate to his lien, and therefore subject to foreclosure, and the privilege of commencing a proceeding for such a purpose, that is, for any foreclosure, or the foreclosure of any right or interest, is, as to such right, interest, or estate, limited to the specified period.

If now we turn from an analysis of the text to a consideration of the reasons for enacting the provision and the objects to be affected thereby, we are impelled to the same conclusion. We must assume that the legislature acted neither arbitrarily nor capriciously, but upon the other hand the reasons must have seemed to it cogent for requiring suit to be commenced in so short a time. Manifestly, the principal, if not the only, purpose of such a limitation could have been to require that the amount and dignity of the lien be judicially ascertained and established while the transaction out of which it arises is sufficiently recent to render the facts reasonably acces-

sible to all parties concerned. Any dispute touching the amount of the claim, the date of its origin, or the time to which the lien relates, is thus to be conclusively settled while the facts are still fresh and the witnesses are available. Now it cannot be doubted that it is often quite as important, if not more important, to an incumbrancer who is a stranger to the transactions upon which the claim of lien is based, to have the benefit of this protection as to the owner himself, who is in a better position to know the facts and to preserve the evidence thereof. Disputes not infrequently arise between mortgagees and lien claimants touching the priority of their respective liens, and inasmuch as the facts establishing the date as of which the mechanic's lien attaches, often rest entirely in parol, and can therefore easily be colored or perverted, it is important that the issue be promptly determined. If we give place to the view urged by the defendant it could very well happen that after the lapse of years a mortgagor would for the first time learn or have reason to suspect that a title originating in the foreclosure of a mechanic's lien was claimed to be superior to the lien of his mortgage. Not having been made party to the suit, his natural presumption would be that the priority of his mortgage is conceded, and there would be nothing in the transfer of title or change of possession to put him upon his guard.

The argument that the limitation does not apply to a mortgage, because the validity and amount of a mechanic's lien may be established in a suit be-

tween the claimant and the owner of the property alone, and that the only issue in which the mortgagee is interested, namely, the date or relative dignity of the lien, may be tried out in a subsequent suit to redeem, insofar as it has any force at all, rests upon an erroneous assumption, which is, that the mortgagee has no right to question the amount or validity of the claim of lien. These are issues which the incumbrancer equally with the owner may raise, and for that purpose the mortgagee is entitled to his day in court. If, for instance, a lien were asserted for the value of material which was never furnished for use in a structure covered by the mortgage, it must be clear that the mortgagee may, by showing the fact, defeat the lien or reduce the amount thereof. As was pertinently said in *Davis v. Bartz*, 118 Pac. 334: "A mortgagee has something more than a mere right to redeem as against an antecedent lien. He has a right to contest its validity or assail its priority, if the evidence warrants either defense. He is entitled to his day in court upon these matters within the period fixed by the statute." See also *Hassall v. Wilcox*, 130 U. S. 493; *Davis v. Alvord*, 93 U. S. 545; *Brown v. Cornwell*, (Va.), 60 S. E. 623; *Eastmore v. Brinkler*, 113 Ga. 637, 39 S. E. 105; *Adams v. Central City Granite Co.*, 154 Mich. 448, 117 N. W. 932; *Federal Trust Co. v. Guigues*, 76 N. J. Eq. 495, 74 Atl. 652.

Without prolonging the discussion, it is to be added only that upon the principal question the decided cases are not entirely in unison. Of those cited for the defendant, *De La Vergue Refrigerating Co. v.*

Montgomery Brewing Co., 57 Fed. 111, and *Monk v. Exposition, Etc. Co.*, (Va.), 68 S. E. 280, it may be conceded, strongly tend to support its position. In *Cornell v. Cornine-Eaton Lumber Co.*, (Colo.) 47 Pac. 912, it is made clear that the conclusion reached was the result largely, if not entirely, of the emphasis placed upon a provision of the statute not found in the Idaho law. In the others, namely, *Whitney v. Higgins*, 10 Cal. 547, *Gamble v. Voll*, 15 Cal. 507, and *Gaines v. Childers*, (Ore.), 63 Pac. 487, while certain language is used favorable to the defense, the precise question was not involved, and they are, to say the least, not directly in point. Furthermore, it is to be added, the construction which the defendant places upon the two California cases, seems to be out of harmony with the more recent decision in *Frates v. Sears*, (144 Cal. 246, 77 Pac. 905), where the court cites with apparent approval, *Falconer v. Cochran*, (68 Minn. 405, 71 N. W. 386), which unquestionably supports the plaintiff's contention here.

Upon the other hand, it is thought that the conclusion we have reached has the unequivocal sanction of the following cases: *Davis v. Bartz*, (Wash.), 118 Pac. 334; *Deming-Colburn, &c. v. Union Nat'l &c.*, (Ind.), 51 N. E. 936; *Union Nat'l &c. v. Helberg*, (Ind.), 51 N. E. 916; *Stoermer v. People's Savings Bank*, (Ind.), 52 N. E. 606; *Green v. Sanford*, (Neb.), 51 N. W. 967; *Ballard v. Thompson*, (Neb.), 58 N. W. 1133; *Smith v. Hurd*, (Minn.), 52 N. W. 922; *Hakanson v. Gunderson*, (Minn.), 56 N. W.

172; *Falconer v. Cochran*, (Minn.), 71 N. W. 386; *Dunphy v. Riddle*, 86 Ill. 22; *Crowl v. Nagle*, 86 Ill. 437; *McGraw v. Bayard*, 96 Ill. 146; *Jacks v. Sullivan*, (Mo.), 30 S. W. 890; *Badger L. Co. v. Staley*, (Mo.), 125 S. W. 779. I refrain from collocating other cases, cited as indirectly tending to the same result.

There is, as I understand, no controversy over the amount due upon the Rodgers mortgage, including principal, interest, taxes paid, and attorney's fees, the last item being, according to agreement, $300.00. Nor is there any controversy as to the amount of principal and interest due upon the plaintiff's mortgage. No evidence was introduced touching the amount of attorney's fees to be allowed plaintiff, but in the complaint it is alleged that $1200.00 is a reasonable fee, and in the answer it is denied that anything in excess of $800.00 would be reasonable, and at the hearing counsel for the plaintiff stated that they would not contend for an amount in excess of $800.00. Assuming, therefore, that the services of counsel rendered in, and in connection with, the suit, are of the reasonable value of $800.00, for which the plaintiff is liable to its attorneys, it appears that part of these services have to do with the reformation of the mortgage, which contained an erroneous description, and the other part with the foreclosure strictly speaking. It is apparent, I think, that the plaintiff cannot recover attorney's fees expended for the purpose of reforming the mortgage. I have

therefore concluded to allow $600.00 for the services in connection with the foreclosure.

Counsel for the plaintiff are directed to prepare decree and to submit the same to opposing counsel before sending it to me for signature.

(Endorsed): Filed Nov. 18, 1913. A. L. Richardson, Clerk.

In the District Court of the United States, for the District of Idaho, Eastern Division.

UTAH IMPLEMENT-VEHICLE COMPANY, a Corporation,

Plaintiff,

vs.

FRANK C. BOWMAN, as Trustee in Bankruptcy of the Estate of N. C. Mickelson, a Bankrupt, and D. W. STANDROD & COMPANY, a Corporation, as Trustee for Idaho Lumber Company, Ltd., Geo. A. Lowe Company, E. E. Rodgers and F. C. Rodgers,

Defendants.

Decree.

This cause having come on to be heard at the October term on the 15th day of October, 1913, and the proofs of the respective parties being made and the said cause having been argued by counsel and by the Court taken under advisement, thereupon upon consideration thereof, it is ordered, adjudged and decreed as follows:

That there is due to the defendant, D. W. Standrod & Company, a corporation, as Trustee for Idaho Lumber Company, Ltd., Geo. A. Lowe Company, E. E. Rodgers and F. C. Rodgers, upon the indebtedness secured by the mortgage in favor of E. E. Rodgers and F. C. Rodgers, the sum of Three Thousand ($3,000.00) Dollars principal, together with interest thereon at the rate of ten per cent per annum from November 29th, 1910, up to the date of this decree and the sum of Two Hundred Ninety and 67-100 ($290.67) Dollars for taxes paid under said mortgage, together with interest on Two Hundred Six and 63-100 ($206.63) Dollars thereof at the rate of ten per cent. per annum from December 30th, 1911, and interest on Eighty-four and 4-100 ($84.04) Dollars thereof at the rate of ten per cent. per annum from the 4th day of January, 1913, up to the date of this decree; also interest upon said amounts and upon the interest thereon up to the date of this decree at the rate of seven per cent. per annum after the date of this decree; also the further sum of Three Hundred ($300.00) Dollars attorney's fees with interest thereon from the date of this decree at the rate of seven per cent. per annum and that for the said amounts the said defendant, D. W. Standrod & Company, as Trustee, as aforesaid, is entitled to and is hereby decreed and awarded a first lien upon the following described real property, to-wit:

Beginning at the northwest corner of lots one (1) and two (2) of block eighteen (18) of the Townsite of Shelley, Bingham county, Idaho; thence east sev-

enty-five (75) feet; thence south one hundred and thirty-two (132) feet; thence west to the east boundary line of the O. S. L. Ry. right of way; thence northeast along said right of way to the place of beginning, together with the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining.

It is further considered, adjudged and decreed that the mortgage to the complainant described in its complaint herein, be and the same is hereby reformed so that the description therein contained and the property thereby mortgaged shall and does read as follows, to-wit:

Beginning at the northwest corner of lots one (1) and two (2) of block eighteen (18) of the Townsite of Shelley, Bingham county, Idaho; thence east seventy-five (75) feet; thence south one hundred thirty-two (132) feet; thence west to the east boundary line of the O. S. L. Ry. right of way; thence northeast along said railroad right of way to the place of beginning. Also the south half of the southwest quarter (S½ SW¼) and the northwest quarter of the southwest quarter (NW¼ SW¼) of Section thirty-four (34) in Township one (1) north of Range thirty-seven (37) east of B. M., together with all the improvements, privileges and appurtenances thereunto belonging.

It is further considered, adjudged and decreed that there is due to the complainant upon its said mortgage the sum of Twelve Thousand Five Hun-

dred Seventy-five and 75-100 ($12,575.75) Dollars, together with interest thereon at the rate of eight per cent. per annum from February 6th, 1911, until February 6th, 1912, and at the rate of twelve per cent. per annum after February 6th, 1912, up to the date of this decree and together with interest upon said principal sum and the interest due thereon at the date of this decree, at the rate of seven per cent. per annum from the date of this decree and the further sum of Six Hundred ($600.00) Dollars attorney's fees with interest thereon from the date of this decree at the rate of seven per cent. per annum and that for said amounts the complainant is awarded and decreed a lien upon all of the real estate hereby described, covered by its mortgage as reformed hereby, subject only to the first lien hereby awarded to the defendant, D. W. Standrod & Company, as Trustee, as aforesaid, upon the portion of the said real estate covered by the said Rodgers mortgage and situate in the village of Shelley, Bingham county, Idaho.

It is further considered, adjudged and decreed that unless the defendant, Frank C. Bowman, as Trustee of the estate of N. C. Mickelson, a bankrupt, shall, within thirty days from the date of this decree, pay to the complainant and to the defendant, D. W. Standrod & Company, as Trustee, as aforesaid, respectively, the aforesaid sums of money, that the properties hereinbefore described be sold by H. J. Hasbrouck, Special Master, for the satisfaction of the respective liens hereinbefore set forth in their

order of priority as hereinbefore fixed and the said H. J. Hasbrouck is hereby appointed Special Master Commissioner for the purpose of carrying out the directions of this decree, and of selling the said property in accordance therewith and according to the practice of this Court and the statutes of the United States in such cases made and provided.

It is further considered, adjudged and decreed that the said sale shall be at public auction to the highest bidder for cash and that the real property, situate in the village of Shelley, Idaho, shall be offered and sold as one entire tract and that the said real estate, situate in said Section thirty-four (34), Township and Range aforesaid, shall be sold as one entire tract and that the said Special Master Commissioner shall give to the purchaser or purchasers at said sale a certificate or certificates of sale, evidencing the right of the said purchaser or purchasers acquired by the said sale.

It is further considered, adjudged and decreed that the defendants, and all persons claiming under them, or either of them shall be barred and foreclosed by the said sale of all right and equity in said property and the whole thereof, except the statutory right of redemption, and that the purchaser of the said property situate in the village of Shelley, Idaho, shall take such title thereto as was had by N. C. Mickelson, a bankrupt, or by the defendants, or either of them, on the 29th day of November, 1910, together with all title by them since acquired, and that the purchaser

of the said property in said Section thirty-four (34), Township and Range aforesaid, shall take such title thereto as was had by N. C. Mickelson, or the defendant, Frank C. Bowman, as Trustee of the estate of N. C. Mickelson, a bankrupt, on the 6th day of February, 1911, together with all title thereafter acquired by them.

It is further considered, adjudged and decreed that a certified copy of this decree shall constitute the authority of the said Special Master Commissioner to carry out the directions herein contained.

FRANK S. DIETRICH,
Judge.

Dated December 2, 1913.

Received copy of the above form of proposed decree this 21st day of Nov. 1913. No suggestions to offer as to form of same.

WILLIAM A. LEE,
Attorney for D. W. Standrod & Co., as Trustee for Idaho Lumber Co. and Geo. A. Lowe & Co.

Received copy of above proposed decree and the same is satisfactory to me.

O. E. McCUTCHEON,
Attorney for Bowman, Receiver.

(Endorsed): Filed Dec. 2, 1913. A. L. Richardson, Clerk.

REPORT OF SPECIAL MASTER COMMISSIONER.

In the District Court of the United States, for the District of Idaho, Eastern Division.

UTAH IMPLEMENT-VEHICLE COMPANY, a Corporation,

Complainant,

vs.

FRANK C. BOWMAN, as Trustee in Bankruptcy of the Estate of N. C. Mickelson, a Bankrupt, and D. W. STANDROD & COMPANY, a Corporation, as Trustee for Idaho Lumber Company, Ltd., Geo. A. Lowe Company, E. E. Rodgers and F. C. Rodgers,

Defendants.

United States of America,
District of Idaho,
Eastern Division,
Bingham County,—ss.

I, H. J. Hasbrouck, Special Master Commissioner under and by virtue of the decree rendered and entered in the above entitled action, a certified copy of which was issued to me by the Clerk of said Court and which is hereto attached, do hereby certify that I received the said certified copy of decree on the 23rd day of January, 1914, and that pursuant thereto I advertised all and singular the said property and premises described in said decree and hereinafter described for sale at public sale for cash in hand, lawful money of the United States at the front door of

the County Court House at Blackfoot in Bingham county, Idaho, on the 2nd day of March, 1914, at the hour of two o'clock P. M., of said day by causing a notice of said sale to be published for four successive weeks (being five consecutive issues thereof) immediately prior to and preceding said sale, in The Idaho Republican, a weekly newspaper selected by me and being a newspaper printed, regularly issued and having a general circulation in the county and State where the said real estate is situated, which said notice correctly described the said properties to be sold and correctly stated and designated the time and place where the said sale would be held. A copy of said notice, as printed and published in said newspaper, together with the affidavit of the publisher of said newspaper thereto attached showing the publication thereof, as hereinbefore stated being hereto attached and filed herewith.

And I further certify that on the said 2nd day of March, 1914, at two o'clock P. M., the day and hour on which the said premises were so advertised to be sold, as aforesaid, I, as such Special Master Commissioner attended at the time and place fixed for said sale and exposed said property and premises for sale at public sale to the highest bidder at public auction as directed by said decree and according to the rules and practices of said Court, and the said property situate in the town of Shelley, Bingham county, Idaho, and described as follows, to-wit:

Beginning at the northwest corner of lots one (1) and two (2) of block eighteen (18) of the Townsite

of Shelley, Bingham county, Idaho; thence east seventy-five (75) feet; thence south one hundred and thirty-two (132) feet; thence west to the east boundary line of the O. S. L. Ry. right of way; thence northeast along said right of way to the place of beginning, together with the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining,
was then and there by me, as such Special Master Commissioner, fairly struck off to Utah Implement-Vehicle Company, a corporation, being the complainant in said action at and for the sum of Eight Thousand and no-100 Dollars, the said purchaser being the highest bidder therefor and that being the highest and best sum bidden for the same and no one being willing or offering to bid on any portion of the said tract less than the entire parcel; and the said property and premises situate in Bingham county, Idaho, and described as follows, to-wit:

The south half of the southwest quarter (S½ SW¼) and the northwest quarter of the southwest quarter (NW¼ SW¼) of Section thirty-four (34) in Township one (1) north of Range thirty-seven (37) east of B. M. in Bingham county, Idaho, together with all the improvements, privileges and appurtenances thereunto belonging,
was then and there by me, as such Special Master Commissioner, fairly struck off to Utah Implement-Vehicle Company, a corporation, being the complainant in said action, at and for the sum of Three Thousand and no-100 ($3,000.00) Dollars, the said pur-

chaser being the highest bidder therefor and that being the highest and best sum bidden for the same and no one being willing or offering to bid on any portion of the said tract less than the entire parcel.

I do further certify that I sold at said sale to the said purchaser all the right, title and interest in and to the tract first above described had by N. C. Mickelson, a bankrupt, or by the defendants in said action, or either of them, on the 29th day of November, 1910, together with all title by them since acquired and all right, title and interest in and to the tract last above described had by N. C. Mickelson, or the defendant, Frank C. Bowman, as Trustee of the estate of N. C. Mickelson, a bankrupt, on the 6th day of February, 1911, together with all title thereafter acquired by them.

I do further certify and report that I have executed to the said purchaser the usual sale certificates provided for by the laws of the State of Idaho at execution sales for said property and delivered the originals thereof to the said purchaser and have filed duplicates of said sale certificates in the office of the Recorder of Bingham County, Idaho.

And I further certify that said sales were made by me subject to confirmation by the Court and also subject to the statutory redemption period of one year provided by the laws of the State of Idaho.

I further certify that the following is a statement of the Special Master Commissioner's fees and disbursements on said sales, to-wit:

Fee of Special Master Commissioner on sale	$25.00
Cost of filing two duplicate sale certificates	1.00
Cost of publishing sale notice	22.50
Total	$48.50

And I do further certify that the complainant being the purchaser at said sale no moneys were received by me on said sale, except the sum of Forty-eight and 50-100 Dollars to cover my fees and disbursements on said sale, which amount was paid to me by the said purchaser and except the sum of Four Thousand Six Hundred Sixteen and 58-100 ($4616.58) Dollars, being the amount due on the day of sale under said decree to the defendant D. W. Standrod & Company, as Trustee, which last named amount was paid to me by the said purchaser.

I further certify that the said complainant gave to me its receipt for the balance of the purchase prices of the said tracts as being applied upon the amounts found due to it under the said decree, which said receipt is hereto attached and filed herewith.

Herewith I pay into Court to the Clerk of this Court the said sum of Four Thousand Six Hundred Sixteen and 58-100 ($4616.58) Dollars received by me, as aforesaid, for and on account of the amount due under said decree to D. W. Standrod & Company, as Trustee.

Dated this 2nd day of March, 1914.

H. J. HASBROUCK,
Special Master Commissioner.

In the District Court of the United States, for the District of Idaho, Eastern Division.

UTAH IMPLEMENT-VEHICLE COMPANY, a Corporation,

Complainant,

vs.

FRANK C. BOWMAN, as Trustee in Bankruptcy of the Estate of N. C. Mickelson, a Bankrupt, and D. W. STANDROD & COMPANY, a Corporation, as Trustee for Idaho Lumber Company, Ltd., and Geo. A. Lowe Company, E. E. Rodgers and F. C. Rodgers,

Defendants.

The undersigned hereby acknowledges as received from H. J. Hasbrouck, Special Master Commissioner herein by the acceptance of its bids at the sale held in said action of the properties described in the decree, on March 2nd, 1914, of the following amounts:

Upon the bid for the property situate in the Village of Shelley, Idaho, the sum of Three Thousand Three Hundred Thirty Four and 92-100 ($3334.92) Dollars.

On account of the bid upon the farm lands described in the decree in said action the sum of Three Thousand and no-100 ($3000.00) Dollars.

Dated March 2nd, 1914.

ST. CLAIR & ST. CLAIR,
Attorneys for Complainant.

In the District Court of the United States, for the District of Idaho, Eastern Division.

UTAH IMPLEMENT-VEHICLE COMPANY, a Corporation,

Complainant,

vs.

FRANK C. BOWMAN, as Trustee in Bankruptcy of the Estate of N. C. Mickelson, a Bankrupt, and D. W. STANDROD & COMPANY, a Corporation, as Trustee for Idaho Lumber Company, Ltd., Geo. A. Lowe Company, E. E. Rodgers and F. C. Rodgers,

Defendants.

United States of America,
District of Idaho,
Eastern Division,
Bingham County,—ss.

Byrd Trego of said County of lawful age being by me duly sworn on his oath says: That he is now and at all times hereinafter mentioned was a citizen of the United States and of the State of Idaho, and a resident of the City of Blackfoot, in said County and State and is wholly disinterested in said cause and is competent to testify as a witness therein.

That he is now and was at all times herein mentioned one of the printers and publishers of The Idaho Republican which was at all times herein mentioned and now is a weekly newspaper printed, regularly issued, and having a general circulation in the County of Bingham and State of Idaho and that a notice of Special Master Commissioner's sale,

of which the annexed printed notice is a true, compared and correct copy, was printed and published in the regular entire weekly issue of said newspaper and not in a supplement thereof, on Friday of each and every week for five consecutive weeks immediately prior to and preceding such sale, the first publication of which notice was on Friday the 30th day of January, 1914, and the last publication of which was on Friday the 27th day of February, 1914.

That said County of Bingham is the County in which said property so advertised to be sold was and is situated and that during all times herein mentioned said newspaper was regularly distributed to its subscribers.

BYRD TREGO.

Subscribed in my presence and sworn to before me this 2nd day of March, 1914.

(N. P. Seal) C. V. FISHER,
Notary Public.

In the District Court of the United States, for the District of Idaho, Eastern Division.

UTAH IMPLEMENT-VEHICLE COMPANY, a Corporation,

Complainant,

vs.

FRANK C. BOWMAN, as Trustee in Bankruptcy of the Estate of N. C. Mickelson, a Bankrupt, et al.,

Defendant.

Notice of Sale.

Notice is hereby given that in pursuance and by virtue of a decree in the above entitled cause, of the above entitled court, dated December 2, 1913, and a certified copy thereof issued to me, I, the undersigned, Special Master Commissioner, by virtue of my appointment as such by the said decree, will sell at public sale, to the highest bidder for cash in hand, lawful money of the United States, subject to confirmation and subject to the right of redemption provided by law, at the front door of the County Court House at Blackfoot, Idaho, on the 2nd day of March, 1914, at the hour of two o'clock p. m., of said day all and singular the property and premises hereinafter more specifically described, to-wit:

The following described tract will be sold to satisfy the costs and expenses of sale and the sum of Thirty-five Hundred Ninety and 67-100 ($3590.67) Dollars, with accrued interest thereon, found due to the defendant, D. W. Standrod & Company, as Trustee, and the sum of Thirteen Thousand One Hundred Seventy-five and 75-100 ($13,175.75) Dollars, with accrued interest thereon found due to the said complainant, to-wit:

Beginning at the Northwest corner of lots one (1) and two (2) of block eighteen (18) of the Townsite of Shelley, Bingham County, Idaho, thence East seventy-five (75) feet; thence South one hundred and thirty-two (132) feet; thence West to the East boundary line of the O. S. L. Ry. right of way; thence Northeast along said right of way to the

place of beginning, together with the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining.

The following described tract will be sold to satisfy the said amount and accrued interest thereon found due to the complainant, to-wit:

The South half of the Southwest quarter (S½ SW¼) and the Northwest quarter of the Southwest quarter (NW¼ SW¼) of Section thirty-four (34) in Township one (1) North of Range thirty-seven (37) East of B. M. in Bingham County, Idaho, together with all the improvements, privileges and appurtenances thereunto belonging.

The said sale will be conducted and made according to the rules and practice of the above named court, and to satisfy the amounts due and to become due as is in said decree provided, for principal and interest and the costs and expenses of sale, or so much thereof as such property will bring at such sale.

The usual sale certificates will be issued at said sale to the successful bidders and if said sale is confirmed and redemption is not made, as permitted by law, deeds will issue to such purchasers.

Dated the 24th day of January, 1914.

H. J. HASBROUCK,
Special Master Commissioner.

(Endorsed): Filed March 3, 1914. A. L. Richardson, Clerk. (Copy of Decree attached.)

In the District Court of the United States, for the District of Idaho, Eastern Division.

UTAH IMPLEMENT-VEHICLE COMPANY, a Corporation,

Complainant,

vs.

FRANK C. BOWMAN, as Trustee in Bankruptcy of the Estate of N. C. Mickelson, a Bankrupt, and D. W. STANDROD & COMPANY, a Corporation, as Trustee for Idaho Lumber Company, Ltd., Geo. A. Lowe Company, E. E. Rodgers and F. C. Rodgers,

Defendants.

Received of A. L. Richardson, Clerk of the above entitled court, the sum of Four Thousand Six Hundred Sixteen and 58-100 Dollars, said sum being due to the defendant, D. W. Standrod & Company, a corporation, in satisfaction of the judgment heretofore rendered herein whereby the said D. W. Standrod & Company, a corporation, as Trustee for E. E. Rodgers and F. C. Rodgers, was adjudged to be entitled to said sum for the said E. E. Rodgers and F. C. Rodgers, said payment being made pursuant to the order of confirmation of sale this day filed herein.

D. W. STANDROD & COMPANY, Trustee.
By John W. Jones,
Residence, Blackfoot, Idaho,
Of counsel for said defendant.

Dated March 10, 1914.

ORDER CONFIRMING SALE OF SPECIAL MASTER.

In the District Court of the United States, for the District of Idaho, Eastern Division.

UTAH IMPLEMENT-VEHICLE COMPANY, a Corporation,

Complainant,

vs.

FRANK C. BOWMAN, as Trustee in Bankruptcy of the Estate of N. C. Mickelson, a Bankrupt, and D. W. STANDROD & COMPANY, a Corporation, as Trustee for Idaho Lumber Company, Ltd., Geo. A. Lowe Company, E. E. Rodgers and F. C. Rodgers,

Defendants.

Order Confirming Sale.

This cause came on to be further heard at Pocatello, Idaho, this 10th day of March, 1914, at two o'clock p. m. of said day and the proofs of the complainant being made and the said cause having been argued by counsel for complainant thereupon upon consideration thereof it was ordered, adjudged and decreed as follows:

That the report of H. J. Hasbrouck, as Special Master Commissioner in said action, filed with the Clerk of this Court on March 3rd, 1914, and the sales made by him of the property described in the decree heretofore rendered and entered in said action, as set forth in said report, be and the same are hereby approved and confirmed and that proper and

legal conveyance of all the said properties so sold are hereby directed to be executed, acknowledged and delivered to the purchaser named in the said report, being the complainant in this action, by the said H. J. Hasbrouck, as Special Master Commissioner, after the expiration of one year from the date said sales were made, to-wit: March 2nd, 1914, as to said sales or either of them as to which redemption or redemptions are not made as permitted by the laws of the State of Idaho.

It is further ordered, adjudged and decreed that the sum of Four Thousand Six Hundred Sixteen and 50-100 ($4616.50) Dollars, being part of proceeds of sale of the property situate in Shelley, Idaho, described in the decree herein and being the amount due to the defendant, D. W. Standrod & Company, as Trustee, under said decree at the date of sale of said property, be by the Clerk of this Court, in whose hands the same now is, paid over to the said defendant, D. W. Standrod & Company, as Trustee, or its attorney herein, John W. Jones, in satisfaction of the amounts found due under said decree to the said D. W. Standrod & Company, as Trustee, under the Rodgers mortgage.

Dated at Pocatello, Idaho, this 14th day of March, 1914.

FRANK S. DIETRICH,
Judge.

(Endorsed): Filed March 14, 1914. A. L. Richardson, Clerk.

In the District Court of the United States, for the District of Idaho, Eastern Division.

UTAH IMPLEMENT-VEHICLE COMPANY, a Corporation,

Plaintiff,

vs.

FRANK C. BOWMAN, as Trustee in Bankruptcy of the Estate of N. C. Mickelson, a Bankrupt, and D. W. STANDROD & COMPANY, a Corporation, as Trustee for Idaho Lumber Company, Ltd., Geo. A. Lowe Company, E. E. Rodgers and F. C. Rodgers,

Defendants.

Petition on Appeal.

The above named defendant and appellant, as Trustee for the Idaho Lumber Company, Ltd., a corporation, and Geo. A. Lowe Company, a corporation, its other *cestui que trusts*, E. E. Rodgers and F. C. Rodgers, and the defendant, Frank C. Bowman, as Trustee in Bankruptcy of the estate of N. C. Mickelson, having been notified in writing to appear and join in this appeal, and having refused to join, conceiving itself aggrieved by the judgment and decree entered in the above entitled court and cause on the 2nd day of December, 1913, and by the proceedings had and orders made leading up to said judgment, doth hereby appeal from said orders, judgment and decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors, which is

filed herewith, and it prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers, upon which said order, judgment and decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California.

Dated this 23rd day of May, 1914.

WILLIAM A. LEE,
Attorney for Defendant and Appellant,
Residence and P. O. Address, Blackfoot, Idaho.

Boise, Idaho, May 23rd, 1914.

And now, to-wit: On this day it is ordered that the foregoing appeal be allowed as prayed for. The defendant, Frank C. Bowman, as Trustee in Bankruptcy of the estate of N. C. Mickelson, a bankrupt, and E. E. Rodgers and F. C. Rodgers, also represented in this action by the defendant and appellant, D. W. Standrod & Company, having waived the right of appeal and refused to join herein, a severance is hereby granted as to them. The bond on appeal is fixed at the sum of $300.00.

FRANK S. DIETRICH,
District Judge.

(Endorsed): Filed May 23, 1914. A. L. Richardson, Clerk. E. B. Yarington, Deputy.

In the District Court of the United States, for the District of Idaho, Eastern Division.

UTAH IMPLEMENT-VEHICLE COMPANY, a Corporation,

Plaintiff,

vs.

FRANK C. BOWMAN, as Trustee in Bankruptcy of the Estate of N. C. Mickelson, a Bankrupt, and D. W. STANDROD & COMPANY, a Corporation, as Trustee for Idaho Lumber Company, Ltd., Geo. A. Lowe Company, E. E. Rodgers and F. C. Rodgers,

Defendants.

Assignment of Errors.

D. W. Standrod & Company, a corporation, as Trustee for the Idaho Lumber Company, Ltd., a corporation, and Geo. A. Lowe Company, a corporation, defendant and appellant herein, on behalf of and in so far as the interests of said *cestui que trusts* are affected by the judgment and decree entered in the above entitled court and cause on the 2nd day of December, 1913, and by the trial, proceedings and orders had and made leading up to said judgment, hereby assigns errors in the following particulars:

I.

Because the Court holds and decides that the Idaho Mechanic's Lien Law, Section 5118, R. C. Idaho, 1907, which provides that no lien shall bind any building, etc., for a longer period than six months

after the claim has been filed, unless proceedings be commenced to enforce such lien should have interpolated therein after the word "commenced" the additional words "against the person, or persons, against whose interests the lien is asserted."

II.

Because the Court refused to hold that under the Idaho Mechanic's Lien Law a lien would continue to bind the property if an action was commenced in a proper court within six months after the same was filed, against the owner of the property.

III.

Because the Court holds and decides that under the Idaho Mechanic's Lien Law a lien is barred against all subsequent mortgagees not made parties to an action to foreclose such lien within six months from the time the same is filed.

IV.

Because the Court refuses to give any effect to Section 5114, R. C. Idaho, 1907, which prefers a mechanic's lien to a mortgage or encumbrance attaching subsequent to the attachment of such lien holder's claim.

V.

Because the Court holds and decides that the judgment and decree and order of sale and sale thereunder, obtained and had in the District Court of the Sixth Judicial District of Idaho, in and for

Bingham County, to enforce the respective mechanic's liens of the Idaho Lumber Company and Geo. A. Lowe Company and all proceedings had in said State Court thereunder, were void as against plaintiff and respondent, because it had not been made a party to said proceedings in the State Court.

VI.

Because the Court did not hold that plaintiff's and respondent's action to foreclose its mortgage should have been an action in equity to permit it to redeem as against defendant's and appellant's foreclosure and sale under the decree obtained in the State Court.

VII.

Because the Court, by its judgment and decree entered December 2, 1913, held and decided in favor of plaintiff and respondent and against appellant and defendant, representing as Trustee the interests of said *crestui que trusts.*

VIII.

Because the Court held and decided that the premises sold under the decree and order of sale made by the State Court be sold under this decree and the proceeds under said second sale be first applied to the payment and discharge of the E. E. and F. C. Rodgers mortgage lien, and that thereafter the remainder of said proceeds be applied to the discharge of plaintiff's and respondent's mortgage lien, and that as against plaintiff's and respondent's said

mortgage defendant's and appellant's judgment and decree obtained in the State Court was null and void.

IX.

Because the Court held and decided that defendant and appellant should be denied any relief under its petition filed October 15, 1913, and did not hold that plaintiff's and respondent's lien was void as an unlawful preference, or that said issue as thus raised should be first heard and determined, and because it permitted its Trustee in Bankruptcy, Frank C. Bowman, to dismiss the action that he had previously brought to set aside plaintiff's and respondent's mortgage, and permitted its said Trustee, Frank C. Bowman, to agree with the plaintiff and respondent that for a money consideration he, the said Frank C. Bowman, as Trustee, would not defend against, or contest, plaintiff's said mortgage, and in holding that defendant's and appellant's *cestui que trusts* were not entitled to be heard upon the issue as to the validity of plaintiff's mortgage and the right of said Trustee in Bankruptcy to dismiss said action and his stipulation not to defend against plaintiff's mortgage.

Dated at Blackfoot, Idaho, this 23rd day of May, 1914.

WILLIAM A. LEE,
Attorney for Defendant and Appellant,
Residence and P. O. Address: Blackfoot, Idaho.

(Endorsed): Filed May 23, 1914. A. L. Richardson, Clerk. By E. B. Yarington, Deputy.

In the District Court of the United States, for the District of Idaho, Eastern Division.

UTAH IMPLEMENT-VEHICLE COMPANY, a Corporation,

Plaintiff,

vs.

FRANK C. BOWMAN, as Trustee in Bankruptcy of the Estate of N. C. Mickelson, a Bankrupt, and D. W. STANDROD & COMPANY, a Corporation, as Trustee for Idaho Lumber Company, Ltd., Geo. A. Lowe Company, E. E. Rodgers and F. C. Rodgers,

Defendants.

Waiver and Refusal to Join in Petition on Appeal.

The above named defendants, Frank C. Bowman, as Trustee in Bankruptcy of the estate of N. C. Mickelson, a bankrupt, by O. E. McCutcheon, his attorney, and E. E. Rodgers and F. C. Rodgers, represented by D. W. Standrod & Company, a corporation, as Trustee, by their attorney, John W. Jones, and said defendants, to the extent of their said several interest in the above entitled action, hereby expressly waive the right of appeal from that certain judgment and decree entered in said cause on December 2, 1913, and hereby refuse to join the Idaho Lumber Company, Ltd., a corporation, and Geo. A. Lowe Company, a corporation, whose interest is represented in said action by D. W. Standrod & Company,

a corporation, as Trustee, in their petition on appeal from said judgment.

Dated at Idaho Falls, Idaho, this 21st day of May, 1914.

O. E. M'CUTCHEON,
Attorney for Frank C. Bowman, as Trustee.

Dated at Blackfoot, Idaho, this 21st day of May, 1914.

JOHN W. JONES,
Attorney for E. E. Rodgers and F. C. Rodgers.

(Endorsed): Filed May 23, 1914. A. L. Richardson, Clerk. By E. B. Yarington, Deputy.

PRAECIPE FOR RECORD ON APPEAL.

In the District Court of the United States, for the District of Idaho, Eastern Division.

UTAH IMPLEMENT-VEHICLE COMPANY, a Corporation,

Plaintiff,

vs.

FRANK C. BOWMAN, as Trustee in Bankruptcy of the Estate of N. C. Mickelson, a Bankrupt, and D. W. STANDROD & COMPANY, a Corporation, as Trustee for Idaho Lumber Company, Ltd., Geo. A. Lowe Company, E. E. Rodgers and F. C. Rodgers,

Defendants.

Praecipe for Record on Appeal of D. W. Standrod & Company, as Trustee.

To the Hon. Alonzo L. Richardson, Clerk of the United States District Court, for the District of Idaho:

Whereas the above named defendant, D. W. Standrod & Company, a corporation, as Trustee for the Idaho Lumber Company, Ltd., a corporation, and Geo. A. Lowe Company, a corporation, as defendant and appellant, has heretofore, to-wit, on the 23rd day of May, 1914, filed herein its petition on appeal, assignment of errors and a citation against the Utah Implement-Vehicle Company, a corporation, plaintiff and respondent, and said citation has been allowed and service of the same has been accepted by Clency St. Clair and Charles C. St. Clair, attorneys for plaintiff and respondent, and defendant and appellant having filed a bond on appeal, defendant, Frank C. Bowman as Trustee in Bankruptcy of the estate of N. C. Mickelson, a bankrupt, and E. E. Rodgers and F. C. Rodgers, having been notified in writing and refused to join this defendant and appellant in said appeal:

You will please have prepared, certified and printed, according to law and the rules and practices of this Court, a transcript on appeal of the record as follows:

1. Bill of Complaint of plaintiff and respondent.

2. Answer of D. W. Standrod & Company, Trustee.

3. Reply of plaintiff to set-off and counterclaim of D. W. Standrod & Company, Trustee.

4. Supplemental Pleading of D. W. Standrod & Company, Trustee, filed herein as of October 15, 1913.

5. Supplemental Pleading on behalf of Frank C. Bowman, Trustee, filed herein as of October 15, 1913.

6. The order of the Court made thereon as of the 15th day of October, 1913, denying the relief prayed for in said Supplemental Pleading.

7. The decision of the Court made and filed herein as of November 18, 1913.

8. The decree of the Court herein made and entered as of December 2, 1913.

9. That the petition on appeal and allowance of the same, the assignment of errors on behalf of said defendant and appellant, and the citation and acceptance of service of the same by the attorneys and solicitors for plaintiff and respondent, be incorporated in the record.

10. Bond on appeal.

WILLIAM A. LEE,

Attorney and Solicitor for the defendant and appellant, D. W. Standrod & Company, a corporation, as Trustee for the Idaho Lumber Company, Ltd., a corporation, and Geo. A. Lowe Company, a corporation; residence, Blackfoot, Idaho.

State of Idaho,
County of Bingham,—ss.

I, William A. Lee, being first duly sworn, upon oath say: That as attorney and solicitor for the defendant and appellant herein I deposited in the post-office at Blackfoot, Idaho, postage prepaid, a copy of

the above and foregoing Praecipe, addressed to St. Clair & St. Clair, at Idaho Falls, Idaho, attorneys and solicitors for plaintiff and respondent, on this 29th day of May, 1914.

WILLIAM A. LEE.

Subscribed and sworn to before me this the 29th day of May, 1914.

(N. P. Seal) C. S. BEEBE,
Notary Public.

(Endorsed): Filed June 2, 1914. A. L. Richardson, Clerk. By E. B. Yarington, Deputy.

PRAECIPE FOR ADDITIONAL RECORD ON APPEAL.

In the District Court of the United States, for the District of Idaho, Eastern Division.

UTAH IMPLEMENT-VEHICLE COMPANY, a Corporation,

Plaintiff,

vs.

FRANK C. BOWMAN, as Trustee in Bankruptcy of the Estate of N. C. Mickelson, a Bankrupt, and D. W. STANDROD & COMPANY, a Corporation, as Trustee for Idaho Lumber Company, Ltd., Geo. A. Lowe Company, E. E. Rodgers and F. C. Rodgers,

Defendants.

Praecipe for Additional Record on Appeal.

To the Hon. Alonzo L. Richardson, Clerk of said Court:

In addition to the matters to be included in the Transcript on Appeal named in the praecipe filed in

said action on behalf of D. W. Standrod & Company, as Trustee, you will also please include in said transcript the following:

1. The report of H. J. Hasbrouck, Special Master Commissioner, as filed in said action.

2. The order of said Court confirming the report of H. J. Hasbrouck, as Special Master Commissioner, and confirming the sales therein reported.

3. All orders, receipts or checks, with the endorsements thereon, relating to or connected with the payment by you, as Clerk of said Court, in said action, to D. W. Standrod & Company, as Trustee, of the moneys paid into your hands as Clerk in said action by the said H. J. Hasbrouck, Special Master Commissioner.

Dated this 1st day of June, 1914.

ST. CLAIR & ST. CLAIR,
Attorneys and Solicitors for Utah Implement-Vehicle Company, plaintiff and appellee; residence, Idaho Falls, Idaho.

State of Idaho,
Bonneville County,—ss.

Charles C. St. Clair, being first duly sworn, upon his oath says: That he is one of the solicitors for the appellee Utah Implement-Vehicle Company in the above entitled action, and that he deposited in the United States postoffice at Blackfoot, Idaho, a copy of the foregoing Praecipe, enclosed in a sealed envelope, with postage prepaid thereon, addressed to

William A. Lee at Blackfoot, Idaho, the attorney and solicitor for said appellant, on the 1st day of June, 1914.

CHARLES C. ST. CLAIR.

Subscribed in my presence and sworn to before me this 1st day of June, 1914.

(N. P. Seal) CLENCY ST. CLAIR,
Notary Public.

(Endorsed): Filed June 3, 1914. A. L. Richardson, Clerk. By E. B. Yarington, Deputy.

BOND ON APPEAL.

In the District Court of the United States, for the District of Idaho, Eastern Division.

UTAH IMPLEMENT-VEHICLE COMPANY, a Corporation,

Plaintiff,

vs.

FRANK C. BOWMAN, as Trustee in Bankruptcy of the Estate of N. C. Mickelson, a Bankrupt, and D. W. STANDROD & COMPANY, a Corporation, as Trustee for Idaho Lumber Company, Ltd., Geo. A. Lowe Company, E. E. Rodgers and F. C. Rodgers,

Defendants.

Bond on Appeal.

Know all men by these presents:

That we, F. C. Christ and F. W. Mitchell, both of the County of Bingham and State of Idaho, are held and firmly bound unto the above named Utah Im-

plement-Vehicle Company, a corporation, plaintiff and respondent, in the sum of Five Hundred Dollars, to be paid to the said Utah Implement-Vehicle Company, for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally firmly by these presents. Sealed with our seals and dated this the 29th day of May, 1914.

Whereas, the above named D. W. Standrod & Company, a corporation, as Trustee for the Idaho Lumber Company, Ltd., a corporation, and Geo. A. Lowe Company, a corporation, defendant and as appellant herein, has prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, to reverse the decree rendered in the above entitled suit by the Judge of the District Court of the United States for the District of Idaho, Eastern Division, the defendant, Frank C. Bowman, as Trustee in Bankruptcy of the estate of N. C. Mickelson, a bankrupt, and E. E. Rodgers and F. C. Rodgers, having refused to join in said appeal, and an order of severance having been made as to them.

Now, therefore, the condition of this obligation is such that if the above named D. W. Standrod & Company, a corporation, shall prosecute said appeal to effect and answer all damages and costs, if it fail to make said appeal good, then this obligation shall

be void; otherwise, the same shall be and remain in full force and virtue.

F. C. CHRIST,
F. W. MITCHELL.

State of Idaho,
County of Bingham,—ss.

F. C. Christ and F. W. Mitchell, being severally duly sworn, each for himself says that he is a resident and a free-holder in said County, State and District, and is worth the sum specified in the foregoing undertaking as a penalty thereof over and above his debts and liabilities, exclusive of property exempt from execution.

F. C. CHRIST,
F. W. MITCHELL.

Subscribed and sworn to before me this the 29th day of May, 1914.

(N. P. Seal) GEO. F. GAGON,
Notary Public.

Approved this the 4th day of June, 1914.

FRANK S. DIETRICH,
Judge.

(Endorsed): Filed June 4, 1914. A. L. Richardson, Clerk.

In the District Court of the United States, for the District of Idaho, Eastern Division.

UTAH IMPLEMENT-VEHICLE COMPANY, a Corporation,

Plaintiff,

vs.

FRANK C. BOWMAN, as Trustee in Bankruptcy of the Estate of N. C. Mickelson, a Bankrupt, and D. W. STANDROD & COMPANY, a Corporation, as Trustee for Idaho Lumber Company, Ltd., Geo. A. Lowe Company, E. E. Rodgers and F. C. Rodgers,

Defendants.

Citation.

United States of America,—ss.

The President of the United States to the plaintiff and respondent, the Utah Implement-Vehicle Company, a corporation, greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be held at the City of San Francisco, in the State of California, within thirty days from the date of this writ, pursuant to an appeal filed in the Clerk's office of the District Court of the United States, for the District of Idaho, Eastern Division, wherein you, the Utah Implement-Vehicle Company, a corporation, are plaintiff and respondent, and D. W. Standrod & Company, a corporation, as Trustee for the Idaho Lumber Company, Ltd., a corporation, and Geo. A. Lowe Company, a corporation, is defendant and appellant, to

show cause, if any there be, why the judgment in the said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward Douglas White, Chief Justice of the Supreme Court of the United States of America, this 23rd day of May, A. D. 1914, and of the Independence of the United States the one hundred and thirty-eighth.

FRANK S. DIETRICH,
United States District Judge for the District of Idaho.

Attest: A. L. Richardson, Clerk. By E. B. Yarington, Deputy Clerk.

Service of the foregoing Citation is accepted this the 26th day of May, 1914.

ST. CLAIR & ST. CLAIR,
Attorneys for plaintiff and respondent, the Utah Implement-Vehicle Company, a corporation.

RETURN TO RECORD.

And thereupon it is ordered by the Court that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit, and the same is transmitted accordingly.

Attest:

A. L. RICHARDSON,
Clerk.

In the District Court of the United States, for the District of Idaho, Eastern Division.

UTAH IMPLEMENT-VEHICLE COMPANY, a Corporation,

Plaintiff,

vs.

FRANK C. BOWMAN, as Trustee in Bankruptcy of the Estate of N. C. Mickelson, a Bankrupt, and D. W. STANDROD & COMPANY, a Corporation, as Trustee for Idaho Lumber Company, Ltd., Geo. A. Lowe Company, E. E. Rodgers and F. C. Rodgers,

Defendants.

Clerk's Certificate.

I, A. L. Richardson, Clerk of the District Court of the United States for the District of Idaho, do hereby certify the foregoing transcript of pages numbered from 1 to 112, inclusive, to be full, true and correct copies of the pleadings and proceedings, in accordance with the praecipes on file herein, in the above entitled cause, and that the same together constitute the transcript of the record herein upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the record herein amounts to the sum of $. 136.00 . and that the same has been paid by the appellant.

Witness my hand and the seal of said Court, affixed at Boise, Idaho, this 10th day of June, 1914.

A. L. RICHARDSON,
Clerk.